

Proposed Rule Change by Chicago Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Ellen"/>	Last Name	<input type="text" value="Neely"/>
Title	<input type="text" value="President & General Counsel"/>		
E-mail	<input type="text" value="eneely@chx.com"/>		
Telephone	<input type="text" value="(312) 663-2496"/>	Fax	<input type="text" value="(312) 663-2231"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By
(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Amendment No. 1
Form 19b-4 Information

1. Text of Proposed Rule Change

- (a) The Chicago Stock Exchange, Incorporated (the “CHX” or the “Exchange”), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the “Act”), submits a proposed change to require its on-floor participants to electronically record specific details about orders originating on or off the floor of the Exchange for execution on the Exchange, as well as orders issued from the floor of the Exchange to any other market or trading venue.

ARTICLE XX

Regular Trading Sessions

* * *

Records of Orders and Executions

RULE 24. (a) Every Floor Participant shall preserve for at least three years (or any longer period of time required by Exchange Act Rule 17a-4) a record, meeting the criteria set out in paragraph (b) below, of:

(1) every order originat[ed]ing [by him or it] on the Floor [and] that is given to (or received from) another Participant for execution and any execution of that order, and

(2) [of] every order [commitment or obligation to trade] issued from the Floor to any other market or trading venue and any execution of that order[through ITS or any other application of the System or pursuant to Rule 39 or Rule 40,]; and

(3) [of] every order originating off the Floor, transmitted by any person, whether or not that person is [other than]a Participant, to such Participant on the Floor and any execution of that order[, which record shall include the name and the amount of the security, the terms of the order and the time when such order was so given or transmitted];

provided, however, that the Exchange may, upon application, grant exemption from the provisions of this Rule.

(b) Subject to the exceptions set out in Interpretations .02, .04, .05 and .07 below, each Floor Participant must record, in such electronic system(s) as the Exchange shall designate, the following details about each order and execution identified in (a)(1) through (3) above:

- (1) Symbol;
- (2) Clearing Participant;
- (3) Order identifier that uniquely identifies the order;
- (4) Identification of Participant recording the order details;
- (5) Number of shares or quantity of security;
- (6) Side of market;
- (7) Designation of order type (e.g., market, limit, stop, stop limit);
- (8) Whether the order is agency or professional;
- (9) Whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G) and any applicable rules thereunder;
- (10) Whether the order is short or short exempt;
- (11) Whether the order is a bona fide arbitrage order;
- (12) Any limit price and/or stop price;
- (13) Date and time of order receipt or transmission (as applicable);
- (14) The market, off-floor firm or on-floor Participant to which the order was transmitted or from which the order was received (if applicable);
- (15) Time in force;
- (16) Designation as held or not held;
- (17) Any special conditions or instructions (including any customer do-not-display or display instructions and any all-or-none conditions);
- (18) Any modifications to the details set out in (1)-(17) above, for all or part of the order, or any cancellation of all or part of the order;
- (19) Date and time of receipt or transmission of any modifications to the order or any cancellation of the order;
- (20) Date and time of any order expiration;
- (21) Identification of the party cancelling or modifying the order;
- (22) Transaction price (if applicable);
- (23) Number of shares executed (if applicable);
- (24) Date and time of execution (if applicable);
- (25) Contra party to the execution (if applicable);
- (26) Settlement instructions (if applicable);
- (27) System-generated time(s) of recording required information; and
- (28) Such other information as the Exchange may from time to time require.

[Whenever a cancellation is entered with respect to such an order or commitment or obligation to trade, or a report of the execution of such an order or commitment or obligation to trade is received, there shall be preserved for at least three years, in addition to the record required by the foregoing paragraph, a record of the cancellation of the order or commitment or obligation to trade or of the receipt of such report, which shall include the time of entry of such cancellation or of the receipt of such report.]

(c) Floor Participants must record the information required by (b) above immediately after such information is received or becomes available.

[c](d) Before any such order is executed, including the case where an order is to be executed by the issuance from the Floor of a commitment or obligation to trade through ITS or any other application of the System or pursuant to Rule 39 or Rule 40, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change to the name or designation of the [in such] account for which an order is to be executed [name or designation] shall be made unless the change has been authorized by the Participant or by a partner or officer of the Participant Firm, who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

[Exceptions

Under exceptional circumstances the Exchange may upon written request waive the requirements contained in (1)(a) above.]

• • • *Interpretations and Policies:*

.01 Every order covered by [(1)] paragraph (a) above, which is to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, shall bear an identifying notation that will enable the executing Participant to disclose to other Participants that the order is subject to those provisions.

.02 For purposes of this rule, an order shall be any written, oral or electronic instruction to effect a transaction. A decision by a co-specialist, market maker or floor broker to buy or sell securities for his or her own account on the Floor of the Exchange shall not constitute an order for which a record must be made under this rule.

.03 Each required record of the time of an event shall be expressed in terms of hours, minutes and seconds.

.04 These rules shall not apply to orders sent or received through the Exchange's MAX system or through any other electronic systems that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange. The Exchange will not recognize a non-Exchange system as providing information in an acceptable format unless that system has synchronized its business clocks for recording data with reference to a time source designated by the Exchange and maintains that synchronization in conformity with procedures prescribed by the Exchange.

.05 Any orders which the Exchange has expressly recognized as incompatible for entry in an Exchange system relied on by a Floor Participant to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (b) above; provided, however, that Floor Participants shall retain a written record of those orders which includes as much of the information set out in paragraph (b) as is possible, but no less than the name and the amount of the security, the terms of the order, the time when such order was so given or transmitted, the date and time of any modifications or cancellations of the order, the date and time of execution and the execution price.

.06 With respect to a bona fide arbitrage order, a Floor Participant may execute such order before entering the order into an electronic system as required by paragraph (b) above, but such Floor Participant must enter such order into such electronic system no later than 60 seconds after the execution of such order. With respect to an order to offset a transaction made in error, a Floor Participant may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such Floor Participant must enter such order into such electronic system no later than 60 seconds after the execution of such order.

.07. A Floor Participant who receives orders to buy and sell the same security and executes those orders in full immediately upon receipt shall record only the information set out in (b)(1), (2), (4), (9), (10), (15) and (22) through (28) above.

.08. Failure to comply with the provisions of this Rule may be considered conduct inconsistent with just and equitable principles of trade, in violation of Article VIII, Rule 7.

.09 The provisions of this Rule do not replace any record retention obligations to which the Exchange's Participants may be subject under the Exchange Act and the rules thereunder.

- (b) Not applicable.
- (c) Not applicable.

2. Procedures of Self-Regulatory Organization

The proposed rule change was approved by the Executive Committee of the Exchange's Board of Governors at a meeting on October 21, 2004. No further approval is required.

3. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) The Exchange's on-floor participants execute trades on the Exchange and on other markets.¹ Currently, the Exchange's electronic systems capture information about most of the orders executed on the Exchange and about many of the orders executed in other markets. This information is used by the Exchange to conduct surveillance of its floor participants' trading activities. In some instances, however, the Exchange does not have complete information about the orders received and executed by its participants or does not have that information in electronic form. To bolster its ability to conduct automated surveillance of its participants' trading activities, the Exchange thus is proposing that its floor participants must provide particular data about all orders originating on or off the floor of the Exchange for execution on the Exchange, as well as all orders issued from the floor of the Exchange to any other market or trading venue.² For purposes of this submission, these orders will be called "covered orders."

Specifically, through this submission, the Exchange is proposing that participants must record, in electronic systems designated by the Exchange, the following details about each covered order: (1) the symbol of the security; (2) the clearing participant; (3) an order identifier that

¹ On February 9, 2005, the Exchange's proposal to demutualize took effect. Under the Exchange's new rules, the Exchange's members are referred to as participants.

² The proposed rule, for example, would require a floor broker who receives an order from another participant (whether the participant is on-floor or off-floor) to record detailed information relating to the order, any changes to the order and its execution. Similarly, if a floor broker receives an order and then transmits it to another market, he would be required to record information not only about the order, but about its transmission to another market and any execution that it received in that market. The rule is designed to provide a complete record of the handling of orders received by the Exchange's floor participants and, together with another proposed rule, will provide a complete record of any orders sent by the Exchange's floor participants to other trading venues. See SR-CHX-2004-25.

uniquely identifies the order;³ (4) the identity of the participant recording the order details; (5) the number of shares or quantity of the security; (6) the side of the market (i.e., whether the order is a buy or sell order); (7) a designation of the order type (e.g., market, limit, stop, stop limit); (8) whether the order is agency or professional;⁴ (9) whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G) and any applicable rules thereunder; (10) whether the order is short or short exempt; (11) whether the order is a bona fide arbitrage order; (12) any limit price and/or stop price; (13) the date and time of order receipt or transmission (as applicable); (14) the market, off-floor firm or on-floor participant to which the order was transmitted or from which the order was received; (15) the order's time in force; (16) any designation as held or not held; (17) any special conditions or instructions (such as any customer do-not-display instructions);⁵ (18) any modifications that are made to the details set out in (1) through (17), for all or part of the order, or any cancellation of all or part of the order; (19) the date and time of receipt or transmission of any modifications to, or cancellation of, the order; (20) the date and time of any order expiration; (21) the identity of the party cancelling or modifying the order; (22) the transaction price, if applicable; (23) the number of shares executed, if applicable; (24) the date and time of execution, if applicable; (25) the contra side to the execution (if applicable); (26) the settlement instructions associated with the order, if applicable; (27) system-generated time(s) of recording required information; and (28) any other information that may be required by the Exchange from time to time.⁶ Floor members would be required to record this information immediately after that information is received or becomes available.⁷

Interpretations to the proposed rule language contain additional information about the information that its members must record and preserve. Among other things, these interpretations confirm that each required record of the time of an event must be expressed in terms of hours, minutes and seconds. These interpretations also provide a definition of the term "order" and identify particular items of information that must be provided by members who receive orders to buy and sell a

³ This order identifier does not change when modifications are made to the order, or when it is cancelled, allowing any changes to be tracked back to the original order.

⁴The Exchange's rules define a "professional" order as one that is for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Article XXX, Rule 2, Interpretation and Policy .04.

⁵ Other special conditions might include whether an order is an "all or none" order.

⁶ CHX Rules, Article XX, Proposed Rule 24(b).

⁷ CHX Rules, Article XX, Proposed Rule 24(c).

security and immediately execute those orders.⁸ The remaining interpretations note that participants will not be required to record information with respect to orders sent or received through the Exchange's MAX® system or through any other electronic systems that the Exchange recognizes as providing the required information in an acceptable format and set out two limited exceptions to the data-recording requirements.⁹

The Exchange submitted an amendment to its original proposal to require that participants provide additional information;¹⁰ to replace references to the Exchange's "members" with references to its "participants," reflecting changes in terminology associated with the Exchange's February 2005 demutualization;¹¹ and to confirm that the requirements of this rule do not replace any record retention obligations to which the Exchange's participants may be subject under the Exchange Act and the rules thereunder. Other changes make more minor corrections to the text.

⁸ Proposed Interpretation and Policy .02 defines an order as "any written, oral or electronic instruction to effect a transaction." This interpretation also notes that a decision by a co-specialist, market maker or floor broker to buy or sell securities for his or her own account on the floor of the Exchange would not constitute an order for purposes of the rule's data recording requirements. This exception for principal trading on the Exchange's floor is designed to recognize that all necessary information about a floor participant's own trading is already captured by the Exchange's trade reporting systems.

Proposed Interpretation and Policy .07 confirms that a floor participant who receives orders to buy and sell the same security and who executes those orders immediately upon receipt, would be required to record information only about the security's symbol, the clearing organization, the identity of the participant firm recording the order details, whether the order is short or short exempt, whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G), the transaction price, the number of shares executed, the date and time of execution, settlement instructions, the contra side to the execution, a system-generated time of recording the required information and any other information required from the Exchange from time to time. This requirement is designed to recognize that the Exchange currently believes that it may not be necessary for the Exchange's participants to record detailed order information about orders that are immediately executed; at the same time, however, the Exchange has retained the ability (through paragraph (b)(28)) to require participants to provide additional information about those orders, including information that is set out in other provisions of paragraph (b).

⁹ See Proposed Interpretations and Policies .04 (regarding orders sent and received through certain systems), .05 (regarding orders that the Exchange expressly recognizes as incompatible for entry into an Exchange system) and .06 (regarding bona fide arbitrage orders and orders to offset a transaction made in error). As set forth below in note 13, the Exchange believes that these exceptions are appropriately tailored to ensure that the Exchange's participants are not required to enter unnecessary information about orders, while still providing information necessary for the Exchange's surveillance efforts.

¹⁰ Among other things, the Exchange added requirements that participants confirm whether an order was for the account of a customer or for the account of the participant sending the order to the other market; whether an order was short or short exempt; the market to which the order was transmitted; the identification of any party cancelling or modifying the order; the date and time of any order expiration; and the contra party to the execution (if applicable).

¹¹ See Release No. 34-51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

The Exchange believes that these proposed requirements appropriately permit the Exchange to collect the electronic information needed to conduct automated surveillance of its participants' trading activities.¹² The Exchange has worked to tailor the rules so that they require participants to record and retain information needed to conduct appropriate surveillance, without imposing unnecessary data-collection requirements.¹³ Moreover, the Exchange is working to finalize changes to its existing Brokerplex® system, so that that system can be used by CHX floor brokers and market makers to record all required order details.¹⁴ As a result, the Exchange's on-floor participants will not be required to develop their own data-recording systems in response to this rule.¹⁵

- (b) Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). In particular, the proposed change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments 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 by permitting the Exchange to require its participants to provide the

¹² Moreover, this proposal is consistent with recommendations made by the independent consultant retained by the Exchange under its recent settlement agreement with the Securities and Exchange Commission (the "Commission"). See SEC Release No. 34-48566 (September 30, 2003), Administrative Proceeding File No. 3-11282.

¹³ For example, Proposed Interpretation and Policy .04 recognizes that participants are not required to record information that is already captured by the Exchange's systems or by other systems that the Exchange expressly recognizes as providing the required data in an acceptable format. (The Exchange's MAX system already captures all of the information required by this rule). Other exceptions to the recording requirements – such as the exceptions for bona fide arbitrage orders and for orders offsetting transactions made in error – are designed to recognize participants' need to immediately execute certain types of orders, while still requiring prompt input of required order information to permit the Exchange to conduct appropriate surveillance. Finally, Proposed Interpretation and Policy .05 – a general provision that would allow the Exchange to identify specific types of orders that might be exempt from the data-recording requirements when they are incompatible for entry into Exchange systems – is designed to cover those rare situations where, due to unexpected consequences of unrelated systems changes or a software failure, participants cannot enter data about a particular type of order into the Exchange's systems for a limited period of time. This exception is not intended to allow participants to avoid the recording requirements of the rule; indeed, it requires participants to record as much information about these orders as possible. The Exchange anticipates that both it and its participants would work quickly to correct any software or systems problems that prevented some or all of the required information from being transmitted to, or received by, the Exchange.

¹⁴ The Exchange's Brokerplex system currently can be used by CHX floor brokers to manage their orders, route orders to the Exchange's co-specialists for execution and report executed trades.

¹⁵ The Exchange's staff will present to the Exchange's Board of Directors a separate rule that confirms the record-keeping obligations of its off-floor participants.

Exchange with data necessary to conduct appropriate surveillance of its participants' trading activities.

4. 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 changes.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

6. Extension of the Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not specifically based on the rules of other self-regulatory organizations or of the Commission. Other market regulators, however, require their members to collect and report information about their order handling activities. *See* NYSE Rules 123 (relating to records of orders) and 132B (relating to specific order tracking requirements); NASD Rules 6951-6957 (relating to the Order Audit Trail System).

9. Exhibits

Exhibit 1: The Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibits 2-3: Not applicable.

Exhibit 4: A marked version of the proposed rule text, showing changes from the originally-submitted version.

Exhibit 5: Not applicable.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34-____; File No. SR-CHX-2004-38)
SELF-REGULATORY ORGANIZATIONS**

Proposed Rule Change By The Chicago Stock Exchange, Inc. Relating to Records of Orders and Executions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 2004, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. On July 3, 2005, the Exchange filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CHX, pursuant to Rule 19b-4 of the Act, proposes to amend its rules to require its on-floor participants to electronically record specific details about orders originating on or off the floor of the Exchange for execution on the Exchange, as well as orders issued from the floor of the Exchange to any other market or trading venue.

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 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. 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 Changes*

1. Purpose

The Exchange's on-floor participants execute trades on the Exchange and on other markets.¹ Currently, the Exchange's electronic systems capture information about most of the orders executed on the Exchange and about many of the orders executed in other markets. This information is used by the Exchange to conduct surveillance of its floor participants' trading activities. In some instances, however, the Exchange does not have complete information about the orders received and executed by its participants or does not have that information in electronic form. To bolster its ability to conduct automated surveillance of its participants' trading activities, the Exchange thus is proposing that its floor participants must provide particular data about all orders originating on or off the floor of the Exchange for execution on the Exchange, as well as all orders issued from the floor of the Exchange to any other market or trading venue.² For purposes of this submission, these orders will be called "covered orders."

¹ On February 9, 2005, the Exchange's proposal to demutualize took effect. Under the Exchange's new rules, the Exchange's members are referred to as participants.

² The proposed rule, for example, would require a floor broker who receives an order from another participant (whether the participant is on-floor or off-floor) to record detailed information relating to the order, any changes to the order and its execution. Similarly, if a floor broker receives an order and then transmits it to another market, he would be required to record information not only about the order, but about its transmission to another market and any execution that it received in that market. The rule is designed to provide a complete record of the handling of orders received by the Exchange's floor participants and, together with another proposed rule, will provide a

Specifically, through this submission, the Exchange is proposing that participants must record, in electronic systems designated by the Exchange, the following details about each covered order: (1) the symbol of the security; (2) the clearing participant; (3) an order identifier that uniquely identifies the order;³ (4) the identity of the participant recording the order details; (5) the number of shares or quantity of the security; (6) the side of the market (i.e., whether the order is a buy or sell order); (7) a designation of the order type (e.g., market, limit, stop, stop limit); (8) whether the order is agency or professional;⁴ (9) whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G) and any applicable rules thereunder; (10) whether the order is short or short exempt; (11) whether the order is a bona fide arbitrage order; (12) any limit price and/or stop price; (13) the date and time of order receipt or transmission (as applicable); (14) the market, off-floor firm or on-floor participant to which the order was transmitted or from which the order was received; (15) the order's time in force; (16) any designation as held or not held; (17) any special conditions or instructions (such as any customer do-not-display instructions);⁵ (18) any modifications that are made to the details set out in (1) through (17), for all or part of the order, or any cancellation of all or part of the order;

complete record of any orders sent by the Exchange's floor participants to other trading venues. *See* SR-CHX-2004-25.

³ This order identifier does not change when modifications are made to the order, or when it is cancelled, allowing any changes to be tracked back to the original order.

⁴ The Exchange's rules define a "professional" order as one that is for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Article XXX, Rule 2, Interpretation and Policy .04.

⁵ Other special conditions might include whether an order is an "all or none" order.

(19) the date and time of receipt or transmission of any modifications to, or cancellation of, the order; (20) the date and time of any order expiration; (21) the identity of the party cancelling or modifying the order; (22) the transaction price, if applicable; (23) the number of shares executed, if applicable; (24) the date and time of execution, if applicable; (25) the contra side to the execution (if applicable); (26) the settlement instructions associated with the order, if applicable; (27) system-generated time(s) of recording required information; and (28) any other information that may be required by the Exchange from time to time.⁶ Floor members would be required to record this information immediately after that information is received or becomes available.⁷

Interpretations to the proposed rule language contain additional information about the information that its members must record and preserve. Among other things, these interpretations confirm that each required record of the time of an event must be expressed in terms of hours, minutes and seconds. These interpretations also provide a definition of the term “order” and identify particular items of information that must be provided by members who receive orders to buy and sell a security and immediately execute those orders.⁸ The remaining interpretations note that participants will not be

⁶ CHX Rules, Article XX, Proposed Rule 24(b).

⁷ CHX Rules, Article XX, Proposed Rule 24(c).

⁸ Proposed Interpretation and Policy .02 defines an order as “any written, oral or electronic instruction to effect a transaction.” This interpretation also notes that a decision by a co-specialist, market maker or floor broker to buy or sell securities for his or her own account on the floor of the Exchange would not constitute an order for purposes of the rule’s data recording requirements. This exception for principal trading on the Exchange’s floor is designed to recognize that all necessary information about a floor participant’s own trading is already captured by the Exchange’s trade reporting systems.

required to record information with respect to orders sent or received through the Exchange's MAX® system or through any other electronic systems that the Exchange recognizes as providing the required information in an acceptable format and set out two limited exceptions to the data-recording requirements.⁹

The Exchange submitted an amendment to its original proposal to require that participants provide additional information;¹⁰ to replace references to the Exchange's "members" with references to its "participants," reflecting changes in terminology

Proposed Interpretation and Policy .07 confirms that a floor participant who receives orders to buy and sell the same security and who executes those orders immediately upon receipt, would be required to record information only about the security's symbol, the clearing organization, the identity of the participant firm recording the order details, whether the order is short or short exempt, whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G), the transaction price, the number of shares executed, the date and time of execution, settlement instructions, the contra side to the execution, a system-generated time of recording the required information and any other information required from the Exchange from time to time. This requirement is designed to recognize that the Exchange currently believes that it may not be necessary for the Exchange's participants to record detailed order information about orders that are immediately executed; at the same time, however, the Exchange has retained the ability (through paragraph (b)(28)) to require participants to provide additional information about those orders, including information that is set out in other provisions of paragraph (b).

⁹ See Proposed Interpretations and Policies .04 (regarding orders sent and received through certain systems), .05 (regarding orders that the Exchange expressly recognizes as incompatible for entry into an Exchange system) and .06 (regarding bona fide arbitrage orders and orders to offset a transaction made in error). As set forth below in note 13, the Exchange believes that these exceptions are appropriately tailored to ensure that the Exchange's participants are not required to enter unnecessary information about orders, while still providing information necessary for the Exchange's surveillance efforts.

¹⁰ Among other things, the Exchange added requirements that participants confirm whether an order was for the account of a customer or for the account of the participant sending the order to the other market; whether an order was short or short exempt; the market to which the order was transmitted; the identification of any party cancelling or modifying the order; the date and time of any order expiration; and the contra party to the execution (if applicable).

associated with the Exchange's February 2005 demutualization;¹¹ and to confirm that the requirements of this rule do not replace any record retention obligations to which the Exchange's participants may be subject under the Exchange Act and the rules thereunder. Other changes make more minor corrections to the text.

The Exchange believes that these proposed requirements appropriately permit the Exchange to collect the electronic information needed to conduct automated surveillance of its participants' trading activities.¹² The Exchange has worked to tailor the rules so that they require participants to record and retain information needed to conduct appropriate surveillance, without imposing unnecessary data-collection requirements.¹³

¹¹ See Release No. 34-51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

¹² Moreover, this proposal is consistent with recommendations made by the independent consultant retained by the Exchange under its recent settlement agreement with the Securities and Exchange Commission (the "Commission"). See SEC Release No. 34-48566 (September 30, 2003), Administrative Proceeding File No. 3-11282.

¹³ For example, Proposed Interpretation and Policy .04 recognizes that participants are not required to record information that is already captured by the Exchange's systems or by other systems that the Exchange expressly recognizes as providing the required data in an acceptable format. (The Exchange's MAX system already captures all of the information required by this rule). Other exceptions to the recording requirements – such as the exceptions for bona fide arbitrage orders and for orders offsetting transactions made in error – are designed to recognize participants' need to immediately execute certain types of orders, while still requiring prompt input of required order information to permit the Exchange to conduct appropriate surveillance. Finally, Proposed Interpretation and Policy .05 – a general provision that would allow the Exchange to identify specific types of orders that might be exempt from the data-recording requirements when they are incompatible for entry into Exchange systems – is designed to cover those rare situations where, due to unexpected consequences of unrelated systems changes or a software failure, participants cannot enter data about a particular type of order into the Exchange's systems for a limited period of time. This exception is not intended to allow participants to avoid the recording requirements of the rule; indeed, it requires participants to record as much information about these orders as possible. The Exchange anticipates that both it and its participants would work quickly to correct any software or systems problems that prevented some or all of the required information from being transmitted to, or received by, the Exchange.

Moreover, the Exchange is working to finalize changes to its existing Brokerplex® system, so that that system can be used by CHX floor brokers and market makers to record all required order details.¹⁴ As a result, the Exchange's on-floor participants will not be required to develop their own data-recording systems in response to this rule.¹⁵

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).¹⁶ In particular, the proposed change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments 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 by permitting the Exchange to require its participants to provide the Exchange with data necessary to conduct appropriate surveillance of its participants' trading activities.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

¹⁴ The Exchange's Brokerplex system currently can be used by CHX floor brokers to manage their orders, route orders to the Exchange's co-specialists for execution and report executed trades.

¹⁵ The Exchange's staff will present to the Exchange's Board of Directors a separate rule that confirms the record-keeping obligations of its off-floor participants.

¹⁶ 15 U.S.C. 78f(b).

C. *Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received from Members, Participants or Others*

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. 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 e-mail to rule-comments@sec.gov. Please include File No. SR-CHX-2004-38 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-2004-38. 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 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 inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions are underlined; deletions are [bracketed]

Chicago Stock Exchange Rules

ARTICLE XX

Regular Trading Sessions

* * *

Records of Orders and Executions

RULE 24. (a) Every Floor Participant shall preserve for at least three years (or any longer period of time required by Exchange Act Rule 17a-4) a record, meeting the criteria set out in paragraph (b) below, of:

(1) every order originat[ed]ing [by him or it] on the Floor [and]that is given to (or received from) another Participant for execution and any execution of that order, and

(2) [of] every order [commitment or obligation to trade] issued from the Floor to any other market or trading venue and any execution of that order[through ITS or any other application of the System or pursuant to Rule 39 or Rule 40,]; and

(3) [of] every order originating off the Floor, transmitted by any person, whether or not that person is [other than]a Participant, to such Participant on the Floor and any execution of that order], which record shall include the name and the amount of the security, the terms of the order and the time when such order was so given or transmitted];

provided, however, that the Exchange may, upon application, grant exemption from the provisions of this Rule.

(b) Subject to the exceptions set out in Interpretations .02, .04, .05 and .07 below, each Floor Participant must record, in such electronic system(s) as the Exchange shall designate, the following details about each order and execution identified in (a)(1) through (3) above:

- (1) Symbol;
- (2) Clearing Participant;
- (3) Order identifier that uniquely identifies the order;
- (4) Identification of Participant recording the order details;
- (5) Number of shares or quantity of security;
- (6) Side of market;

- (7) Designation of order type (e.g., market, limit, stop, stop limit);
- (8) Whether the order is agency or professional;
- (9) Whether the order is being handled pursuant to Exchange Act Section 11(a)(1)(G) and any applicable rules thereunder;
- (10) Whether the order is short or short exempt;
- (11) Whether the order is a bona fide arbitrage order;
- (12) Any limit price and/or stop price;
- (13) Date and time of order receipt or transmission (as applicable);
- (14) The market, off-floor firm or on-floor Participant to which the order was transmitted or from which the order was received (if applicable);
- (15) Time in force;
- (16) Designation as held or not held;
- (17) Any special conditions or instructions (including any customer do-not-display or display instructions and any all-or-none conditions);
- (18) Any modifications to the details set out in (1)-(17) above, for all or part of the order, or any cancellation of all or part of the order;
- (19) Date and time of receipt of any modifications to the order or any cancellation of the order;
- (20) Date and time of any order expiration;
- (21) Identification of the party cancelling or modifying the order;
- (22) Transaction price (if applicable);
- (23) Number of shares executed (if applicable);
- (24) Date and time of execution (if applicable);
- (25) Contra party to the execution (if applicable);
- (26) Settlement instructions (if applicable);
- (27) System-generated time(s) of recording required information; and
- (28) Such other information as the Exchange may from time to time require.

[Whenever a cancellation is entered with respect to such an order or commitment or obligation to trade, or a report of the execution of such an order or commitment or obligation to trade is received, there shall be preserved for at least three years, in addition to the record required by the foregoing paragraph, a record of the cancellation of the order or commitment or obligation to trade or of the receipt of such report, which shall include the time of entry of such cancellation or of the receipt of such report.]

(c) Floor Participants must record the information required by (b) above immediately after such information is received or becomes available.

[c](d) Before any such order is executed, including the case where an order is to be executed by the issuance from the Floor of a commitment or obligation to trade through ITS or any other application of the System or pursuant to Rule 39 or Rule 40, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change to the name or designation of the [in such] account for which an order is to be executed [name or designation] shall be

made unless the change has been authorized by the Participant or by a partner or officer of the Participant Firm, as the case may be, who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

[Exceptions

Under exceptional circumstances the Exchange may upon written request waive the requirements contained in (1)(a) above.]

• • • *Interpretations and Policies:*

.01 Every order covered by [(1)] paragraph (a) above, which is to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, shall bear an identifying notation that will enable the executing Floor Participant to disclose to other Floor Participants that the order is subject to those provisions.

.02 For purposes of this rule, an order shall be any written, oral or electronic instruction to effect a transaction. A decision by a co-specialist, market maker or floor broker to buy or sell securities for his or her own account on the Floor of the Exchange shall not constitute an order for which a record must be made under this rule.

.03 Each required record of the time of an event shall be expressed in terms of hours, minutes and seconds.

.04 These rules shall not apply to orders sent or received through the Exchange's MAX system or through any other electronic systems that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange. The Exchange will not recognize a non-Exchange system as providing information in an acceptable format unless that system has synchronized its business clocks for recording data with reference to a time source designated by the Exchange and maintains that synchronization in conformity with procedures prescribed by the Exchange.

.05 Any orders which the Exchange has expressly recognized as incompatible for entry in an Exchange system relied on by a Floor Participant to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (b) above; provided, however, that Floor Participants shall retain a written record of those orders which includes as much of the information set out in paragraph (b) as is possible, but no less than the name and the amount of the security, the terms of the order, the time when such order was so given or transmitted, the date and time of any modifications or cancellations of the order, the date and time of execution and the execution price.

.06 With respect to a bona fide arbitrage order, a Floor Participant may execute such order before entering the order into an electronic system as required by paragraph (b) above, but such Floor Participant must enter such order into such electronic system no later than 60 seconds after the execution of such order. With respect to an order to offset a transaction made in error, a Floor Participant may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such Floor Participant must enter such order into such electronic system no later than 60 seconds after the execution of such order.

.07. A Floor Participant who receives orders to buy and sell the same security and executes those orders immediately upon receipt shall record only the information set out in (b)(1), (2), (4), (9), (10), (15) and (22) through (28) above.

.08. Failure to comply with the provisions of this Rule may be considered conduct inconsistent with just and equitable principles of trade, in violation of Article VIII, Rule 7.

.09 The provisions of this Rule do not replace any record retention obligations to which the Exchange's Floor Participants may be subject under the Exchange Act and the rules thereunder.