

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67138; File No. SR-CHX-2012-10)

June 5, 2012

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend the Requirements of CHX Article 3, Rule 3 and Related CHX Rules in Order to Approve Apex Clearing Corporation as a CHX Participant and Trading Permit Holder

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2012, the Chicago Stock Exchange, Incorporated (“Exchange” or “CHX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 Exchange proposes to temporarily suspend the requirements of CHX Article 3, Rule 3 and related CHX rules concerning the approval of new Participants and Trading Permit holders (“TPHs”) in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (“Apex Clearing”), as a CHX Participant and TPH. The text of this proposed rule

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

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

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

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

change is available on the Exchange’s website at ([www.chx.com](http://www.chx.com)), at the Exchange’s Office of the Secretary 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, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this rule filing, CHX proposes to temporarily suspend the requirements of CHX Article 3, Rule 3 and related rules as it pertains to the application approval process of a CHX Participant<sup>5</sup> and TPH<sup>6</sup> in order to immediately approve Apex Clearing.<sup>7</sup> The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the

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<sup>5</sup> A “Participant” means any Participant Firm that holds a valid CHX Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Trader or Institutional Broker Representative, respectively. A Participant shall be considered a “member” of the Exchange for purposes of the Exchange Act. If a Participant is not a natural person, the Participant may also be referred to as a “Participant Firm,” but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm (See CHX Article 1, Rule 1(s)).

<sup>6</sup> A “Trading Permit” means a permit issued by the Exchange, granting the holder a revocable license to execute approved securities transactions through the Exchange’s Trading Facilities, or to have those transactions executed on its behalf (See CHX Article 1, Rule 1(aa)).

<sup>7</sup> Pursuant to CHX rules, each clearing firm must be a Participant of the Exchange (See CHX Article 21, Rule 1(b)).

clearing and execution operations of Penson Financial Services Inc. (“PFSI”) without unnecessary disruption and to limit any significant collateral impact to a number of other CHX Participants. The proposed temporary suspension is contingent upon Apex Clearing having complied with all Exchange rules related to new Participant and TPH applicants within 30 calendar days of the date Apex Clearing is provisionally approved as a Participant and TPH pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (“Apex Holdings”), Apex Clearing Solutions, Broadridge Financial Solutions, Inc. (“Broadridge”), PFSI and Penson Worldwide, Inc. (“PWI”) (together, the “Parties”) consummated a transaction resulting in a change in ownership of Apex Clearing.<sup>8</sup> Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the “Transferring Accounts”).<sup>9</sup>

As a result of the transaction, Apex Clearing, which is not a CHX Participant and TPH, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as a CHX Participant and TPH. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with CHX Article 3, Rule 3 and related new Participant/TPH rules. Because of the need for seamless continuity with respect to the

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<sup>8</sup> Prior to the Transaction, Apex Clearing’s name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (“BSPS”) where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

<sup>9</sup> See Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Participant/TPH rules in order to enable Apex Clearing's approval as a Participant Firm and TPH on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new Participant/TPH requirements within 30 calendar days after provisional approval.

CHX Article 3, Rule 3 requires that an application for a new Participant and TPH be made in writing and filed with the Exchange. As part of the process, applications must be made in accordance with Article 3, Rule 3, and the applicant must provide, among other things, the following:

- Written Application for Registration
- Cover Letter: Indicating how and what the TPH will be used for, signed by a principal officer, general partner, or managing member of the firm.
- For Partnerships: Executed or certified copy of Partnership Agreement and all amendments thereto.
- For Corporations: Copy of Articles of Incorporation, and all amendments thereto, certified by the corporation's secretary; copy of By-Laws, and all amendments thereto, certified by the corporation's secretary; and certified copy of resolution authorizing registration of the corporation as a Participant.
- For Limited Liability Companies: Operation Agreement and Articles of Organization or Certificate of Formation.
- For all Applicants: Current executed Statement of Financial Condition and attached balance sheet pursuant to SEC Exchange Act Rule 15b1-2; Copies of FOCUS Part II or Part IIA Reports for the most recent 6 month period; Copy of most recent Confidential

Annual CPA Audit prepared by firm's independent accountant; Executed copy of 15b1-2 Information Sheet, Designation of Recipient For Service of Notice, Executed and notarized copy of Form BD (SEC registration statement), and amendments; names of subordinated lenders, if any; complete Forms U-4 for all general partners, members of principal officers of designated members (only page 2 of form U-4 for members designated to other SRO's).

- If CHX is not the DEA for the Applicant: A copy of letter from the Applicant to their DEA, granting the DEA permission to provide information to the CHX, pursuant to their application for a trading permit.
- If Applicant is a FINRA Member: A copy of the FINRA Membership Agreement.

In addition, the Exchange reviews whether the applicant meets federal and CHX capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is generally required to provide and have completed prior to being approved as a Participant and TPH, the application approval process generally takes a few weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and execution operations of PFSI as of the open of trading on June 6, 2012. In order to avoid interruption of these services PFSI currently provides, CHX believes that Apex Clearing should be approved immediately as a CHX Participant and TPH. The Exchange therefore proposes providing Apex Clearing with a temporary suspension of CHX Article 3, Rule 3 and other relevant rules as they relate to approval to operate as a CHX Participant and TPH and immediately approve Apex Clearing as a Participant and TPH. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as a CHX Participant and TPH; and
- Within 30 calendar days of Apex Clearing’s approval as a Participant and TPH under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange’s new Participant/TPH application rules and policies.

As proposed, if Apex Clearing does not comply with all applicable CHX Participant/TPH requirements within the aforementioned 30-day timeframe, its status as an approved CHX Participant and TPH will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other CHX Participants by execution of global agreements thereto. Notice of such assumption will be provided to the impacted Participants through the issuance of CHX Information Memorandums prior to the effective date thereof.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a CHX Participant and TPH will, among other things, avoid interruption of

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

the services PFSI currently provides to other Exchange Participants. Based on information and representations provided by Apex Clearing, a temporary suspension of certain CHX Participant/TPH application rules is necessary based on the expedited nature of the transaction to ensure a seamless continuity with respect to the transferring accounts. Consequently, CHX believes a temporary suspension of its Participant/TPH application rule requirements so that Apex Clearing can be approved immediately as CHX Participant and TPH will help foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as a CHX Participant and TPH. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Participants and TPHs. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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



delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.<sup>18</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2012-10 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 Number SR-CHX-2012-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 the filing also will 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 Number SR-CHX-2012-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).