

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50628; File No. SR-CHX-2004-35)

November 3, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Transfer of CHX Memberships

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 26, 2004, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The CHX filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A)(i) of the Act,⁴ and Rule 19b-4(f)(1) thereunder,⁵ as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Commission, dated October 27, 2004 (“Amendment No. 1”). In Amendment No. 1, CHX revised the text of the proposed rule to indicate that the rule is effective as of October 26, 2004.

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).

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

The proposed rule change, which would add Interpretation and Policy .04 to CHX Article I, Rule 10, "Transfers of Memberships," would effectively prohibit the transfer of CHX memberships to certain newly approved lessors. The text of the proposed rule change appears below. Proposed new language is italicized.

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**ARTICLE I
Membership**

Transfers of Memberships

RULE 10. No change.

• • • Interpretations and Policies:

.01 - .03 No change.

.04 No approval of new approved lessors. Effective October 26, 2004, the Exchange will not approve the transfer of a membership to a person or firm who seeks to become an approved lessor, but who is not already the owner of a CHX membership, unless that person or firm qualifies as an accredited investor. This policy will end if and when the Exchange determines that it will not seek approval of the demutualization transaction.

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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

On August 5, 2004, the Exchange’s Board of Governors voted unanimously to present a demutualization plan to the Exchange’s members for approval.⁶ The proposed transaction involves the private offering of securities using the safe harbor provided by Rule 506 of Regulation D under the Securities Act of 1933.⁷ Under Rule 506, an offering of securities is not a public offering if there are no more than, or if the issuer reasonably believes that there are no more than, 35 “purchasers” of securities.⁸ The calculation of the number of purchasers under Rule 506 excludes any person who qualifies as an “accredited investor.”⁹ The Exchange has received confirmation from members sufficient to allow the Exchange to believe that it will not be offering securities to more than the appropriate number of persons who are not accredited investors and therefore believes that its proposed transaction will qualify as a private offering

⁶ As with other similar demutualization transactions previously approved by the Commission, the Exchange’s proposed demutualization transaction contemplates a change in the Exchange’s organizational structure. In this proposed demutualization transaction, the CHX will change from a not-for-profit, non-stock corporation owned by its members to a wholly-owned subsidiary of a holding company, CHX Holdings, Inc., which is to be organized as a for-profit, stock corporation owned by its stockholders. The members of CHX at the time of the proposed demutualization transaction will receive shares of common stock of the new holding company in exchange for their CHX memberships, and thus will become the stockholders of the new holding company. Members who are qualified to trade on the Exchange will receive trading permits that give them continued access to the Exchange’s trading facilities.

⁷ 17 CFR 230.506.

⁸ Id.

⁹ 17 CFR 230.501(e).

under Rule 506. A CHX member vote on the demutualization plan is currently scheduled for mid-November of 2004.

Under the Exchange's existing rules, a person or firm can purchase a membership on the Exchange for the sole purpose of providing a financing mechanism for another person or entity that desires to become an Exchange member.¹⁰ These persons, called "approved lessors," are not considered to be members of the Exchange for purposes of the Exchange's rules or under the federal securities laws.

To ensure that the Exchange's offering of securities can continue to qualify as a private, not a public, offering, the Exchange is proposing to prohibit any new approved lessor from purchasing a CHX membership unless that person or firm qualifies as an accredited investor. The Exchange believes that this proposal is appropriate because it permits the Exchange's proposed demutualization transaction to continue as a private offering under Rule 506, as approved by the Exchange's Board. Moreover, because the Exchange's proposed demutualization transaction includes rule changes that would end the approved lessor program completely by barring its members from transferring the right to trade on the Exchange, the Exchange believes that there is no real business reason for a person who is not currently an approved lessor to become an approved lessor for only a few weeks. Thus, the Exchange represents that the proposed limitation will impose at most a negligible restriction while preserving the ability of the Exchange to effectuate the demutualization quickly through a Regulation D private offering.

This prohibition would remain in effect until the effective date of the demutualization transaction (if it is approved by the Exchange's members and by the Commission). If, for some

¹⁰ See CHX Article IA, Rule 1(a).

reason, the Exchange's members reject the demutualization proposal, the prohibition would terminate immediately.

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) of the Act.¹¹ In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act¹² 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.

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

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

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change, as amended, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(1) thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change,

¹¹ 15 U.S.C. 78(f)(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(1).

amended, the Commission may summarily abrogate 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2004-35 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 Number SR-CHX-2004-35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth

Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-35 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.¹⁵

J. Lynn Taylor
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).