

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54226; File No. SR-CHX-2006-23)

July 27, 2006

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Regarding Amendments to the Exchange's Bylaws

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 June 22, 2006, the Chicago Stock Exchange, Inc. (the "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 CHX. On July 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Through this filing, the Exchange proposes to amend its bylaws and rules to make several governance changes. This proposal would (1) require the Exchange's Board of Directors to identify one position in each class of directors as the "Subject to Petition (STP) Participant Director," with candidates for that position to be subject to a petition process involving the Exchange's participants; (2) change the composition of the Exchange's Nominating & Governance Committee to include two public directors and two STP Participant Directors; and

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

³ See Partial Amendment to Form 19b-4 dated July 20, 2006 ("Amendment No. 1"). In Amendment No. 1, the Exchange incorporated (a) a change to the proposed text of Article II, Section 3(a) of the Bylaws, replacing the defined term "CHX Participant Director" with a reference to representatives of the holders of Series A Preferred Stock of CHX Holdings, Inc. ("CHX Holdings"); and (b) additional descriptive information about the rules changes that are part of the filing.

(3) modify the Exchange's rules to confirm that each participant firm would need only one trading permit to conduct business on the Exchange. The text of this proposed rule change is available on the Exchange's Web site at http://www.chx.com/rules/proposed_rules.htm, at the Exchange's principal office, 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

As a result of its demutualization in February 2005, the Exchange became the wholly-owned subsidiary of CHX Holdings, a Delaware corporation.⁴ The Exchange's demutualization

⁴ See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

was driven, in part, by a desire to generate opportunities to enter into strategic alliances by offering stock to interested entities. On June 21, 2006, CHX Holdings announced that it had agreed to the terms of strategic transactions with four firms that will result in an investment in CHX Holdings, in exchange for minority equity stakes in the company. In connection with these transactions, CHX has agreed to propose amendments to its bylaws and rules to (1) require the Exchange's Board of Directors to identify one position in each Board class as the STP Participant Director, with candidates for that position to be subject to a petition process involving the Exchange's participants; (2) change the composition of the Exchange's Nominating & Governance Committee to include two public directors and two STP Participant Directors; and (3) modify the Exchange's rules to confirm that each participant firm would need only one trading permit to conduct business on the Exchange.

Changes in Exchange Governance Contemplated by the Proposed Transaction

Under the terms of the agreements reached with potential investors, the Exchange's Board of Directors would be reduced by one director – after the closing of the transactions, the Board would consist of the Exchange's chief executive officer, six public directors and five participant directors.⁵ The Exchange is required to use its best efforts to place a representative of

⁵ The Exchange's Board of Directors currently consists of its chief executive officer, seven public directors and five participant directors. The Board members are divided into three classes, with each class serving a three-year term. See Article II, Section 2(c) of the Exchange's bylaws. A "public director" is a director who (i) is not a participant in the Exchange, or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of the Exchange or any of its affiliates, (iii) is not broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with CHX Holdings or the Exchange (or with any of their affiliates) or with any broker or dealer. See Article II, Section 2(b) of the Exchange's bylaws. A "participant director" is a director who is a participant or an officer, managing member or partner of an entity that is a participant. Id. A person or entity is a participant in the Exchange if he or it holds a trading permit issued by the Exchange.

each of the four investors on the CHX Board.⁶ The remaining participant director would not be affiliated with any of the investors.

Identification of STP Participant Directors

Under the Exchange's existing bylaws, the Nominating & Governance Committee identifies candidates to fill the Board positions that are up for election each year.⁷ In identifying candidates for public director positions, the Committee typically meets to discuss candidates and provides its slate of nominees to the Exchange's sole stockholder, CHX Holdings, for election. The process for identifying candidates for participant director positions, however, is more detailed and includes both a requirement that the Committee hold two open meetings with Exchange participants and a petition process that allows participants to add names to the Committee's initial slate.⁸ This process is designed to provide Exchange participants with fair

⁶ One investor representative has been named, by the Exchange's Nominating & Governance Committee, as a candidate for the open position in Class 1 on the Exchange's Board. The Exchange anticipates that, immediately following the 2006 stockholders' meeting, two participant directors (one director currently serving in Class 1 and one director currently serving in Class 3 of the Board) will resign, resulting in vacancies that will be filled with representatives of two other investors. One of the potential investors already has a representative on the Exchange's Board of Directors; this person would retain his position on the Board.

⁷ See Article II, Section 3(b) of the Exchange's bylaws.

⁸ Specifically, under this process, no later than 60 days prior to the date announced for the annual stockholder meeting, the Committee's initial nominees for participant director positions are reported to the Exchange's secretary, who then must promptly announce the nominees to the Exchange's participants. See Article II, Section 3(d) of the Exchange's bylaws. Participants may identify other candidates for one or more of these positions by submitting a written petition, signed by at least ten participants, with respect to each additional candidate. Id. If one or more valid petitions are submitted, the Exchange conducts an election to confirm the participants' selections of nominees for the participant director positions. See Article II, Section 3(e) of the Exchange's bylaws. Each participant has one vote with respect to each participant director position that is to be filled. The individuals having the largest number of votes are the final nominees; the Nominating & Governance Committee must nominate these persons to fill the available positions. See Article II, Sections 3(c) and 3(e) of the Exchange's bylaws.

representation in the selection of Exchange directors.⁹

The Exchange now proposes to amend its bylaws to require the Board of Directors to set aside one position in each Board class as the “STP Participant Director,” with the candidates for each of those positions to be subject to the petition process described above. Although this proposal would reduce the number of participant directors whose elections are subject to this petition process, it would still ensure that at least 20% of the Exchange’s directors (on a Board of fifteen or fewer people) are selected in this manner, meeting the “fair representation” percentage currently required by the Commission.¹⁰ Moreover, by requiring that the Board identify one position in each of the three Board classes to be subject to this process, the proposal would allow participants an opportunity to select at least one participant director each year.¹¹

Composition of the Nominating & Governance Committee

The Exchange’s Nominating & Governance Committee currently is composed of six Board members – three participant directors and three public directors.¹² Through this filing, the Exchange seeks to change this Committee’s composition by reducing its size so that it consists of

⁹ See 15 U.S.C. 78f(b)(3) (requiring that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs).

¹⁰ See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (“SRO Governance Release”). In note 148 of the SRO Governance Release, the Commission states, among other things, that it has taken the position that the fair representation requirement could be satisfied if an exchange’s rules provide that members constitute at least 20% of the individuals serving on an exchange’s nominating committee.

¹¹ Once the Board sets aside these three STP participant director positions, only the candidate(s) for one STP participant director position each year would ordinarily be up for election. If one of the STP participant director positions that is not normally up for election in a particular year becomes vacant during that year, however, the candidates for this now vacant position also would be subject to the petition process.

¹² See Article II, Section 3(a) of the Exchange’s bylaws.

two public directors and two STP participant directors.¹³ This reduced Committee size has a better overall relationship to the size of the Exchange’s Board of Directors, while still ensuring that the Committee is appointed by the full Board of Directors and composed of an equal number of public and participant directors.¹⁴

One Trading Permit per Participant

Under the Exchange’s existing rules, each participant firm or each person who is registered as a co-specialist, floor broker or market maker for a participant firm must hold a valid trading permit.¹⁵ Through this submission, the Exchange proposes to change that requirement so that each participant firm must hold a valid trading permit, but individuals who serve as co-specialists, floor brokers and market makers for a firm are no longer subject to this requirement.¹⁶ The Exchange believes that this change better positions it for the move to its

¹³ See Proposed Amendment to Article II, Section 3(a) of the Exchange’s bylaws.

¹⁴ The proposal also is designed to ensure that a participant director who is not affiliated with the four investors will serve on the Committee. The proposed text does this by requiring that one of the STP participant directors on the Committee must not be a representative of a firm that is a holder of Series A Preferred Stock of CHX Holdings. Each of the investors will be making a minority investment in CHX Holdings through the purchase of Series A Preferred Stock and, at least immediately following the transaction, the four firms will be the only holders of the Series A Preferred Stock.

¹⁵ See Article II, Rule 2(a).

¹⁶ Persons who serve in these capacities would continue to be required to register with the Exchange in these capacities. See Article VI, Rule 2(b)(7) (replacing the concept of a firm’s “nominee” with a specific reference to persons serving as co-specialists, market makers or floor brokers). In making this proposed change to its rules, the Exchange has combined current Articles II and III to create a single article entitled “Participants and Participant Firms.” Throughout its remaining rules, the Exchange has proposed changes to eliminate references to “nominees” and to confirm that participant firms hold trading permits while individual persons who serve as co-specialists, market makers and floor brokers do not hold trading permits, but are registered in those capacities under Article VI. Other changes delete references to rules that are being deleted as part of this proposal or that are no longer in the Exchange’s Rulebook. See, e.g., Proposed Amendment to Article XII, Rule 9(h)(i)(1) (deleting rule from the Minor Rule Violation Plan that is being deleted as part of this proposal because it relates to the registration of a

proposed new trading model by reducing the number of permits that most participants are required to hold in a manner that the Exchange believes is more consistent with other automated markets.¹⁷ The Exchange also believes that reducing the relative number of trading permits would not undermine or circumvent the Act's requirement for fair representation of members.

As mentioned above, each of these proposed changes to the Exchange's bylaws and rules are related to the recently-announced strategic transactions through which four firms have agreed to make investments in CHX Holdings, in exchange for minority equity stakes in the company. The Exchange believes that each of these proposed changes is reasonable and continues to provide Exchange participants with a fair opportunity to participate in the governance of the Exchange.

2. Statutory Basis

Approval of the rule changes 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) of the Act.¹⁸ In

participant firm through an individual who holds a trading permit); and Proposed Amendment to Article XII, Rule 9(h)(i)(5) (deleting a reference to a rule that no longer exists). While these changes appear extensive, they simply repeat the same types of changes wherever appropriate in the Exchange's rules.

¹⁷ In the Exchange's proposed new trading model, the Exchange seeks to move to a more automated system, which would allow participants – from any location – to submit orders for immediate execution. See SR-CHX-2006-05. By reducing the number of trading permits that a firm needs (in this new model and even before it is fully implemented), the Exchange is reducing the fees that must be paid by that firm. Under the Exchange's current fee schedule, a participant must pay \$6,000 each year, divided into monthly installments, for each trading permit that it holds.

¹⁸ 15 U.S.C. 78f(b).

particular, the proposed changes are consistent with Section 6(b)(5) of the Act,¹⁹ because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing the Exchange to make reasonable changes to certain aspects of its governance that are both consistent with the terms of proposed transactions and with providing all of its participants with fair representation in the Exchange's governance.

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

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer 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 change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁹ 15 U.S.C. 78f(b)(5).

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 No. SR-CHX-2006-23 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-CHX-2006-23. 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 Room. 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-2006-23 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.²⁰

Nancy M. Morris
Secretary

²⁰ 17 CFR 200.30-3(a)(12).