

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61732; File No. SR-CBOE-2010-027)

March 18, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend CBOE Rule 31.85 to, Among Other Things, Prohibit Broker Discretionary Voting on the Elections of Directors

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 March 4, 2010, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend CBOE Rule 31.85 to eliminate broker discretionary voting for all elections of directors at shareholder meetings, whether contested or not, except for companies registered under the Investment Company Act of 1940 (the “1940 Act”), to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company, and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

investment company's investment advisory contract with a new investment advisor. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

A shareholder of a public company may hold shares either directly, as the record holder, or indirectly, as the beneficial holder, with the shares held in the name of the beneficial shareholder's broker-dealer, bank nominee, or custodian ("securities intermediary"), which is the record holder.⁵ The latter generally is referred to as holding securities in "street name."⁶ The number of beneficial owners holding securities in street name has increased significantly over the past thirty-three years.

Currently, CBOE Rule 31.85 permits brokers to vote without voting instructions from the beneficial owner on uncontested elections of directors.⁷ Rule 31.85 also lays out a list of

⁵ See Commission Release No. 34-60215 (July 1, 2009).

⁶ See supra note 2 [sic].

⁷ See CBOE Rule 31.85(a), which explains the process and situations in which brokers may vote without voting instructions from the beneficial owner.

enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.⁸ This list does not include the election of directors. Due to the increase in the holding of securities in street name, the impact of the broker vote on the election of directors has become increasingly significant. At the same time, the number of proxy campaigns, such as “just vote no” or “withhold” campaigns, that have targeted the election of directors without a formal contest has also increased. This has made the “uncontested” election of directors a more controversial, as opposed to routine, matter.⁹

In light of this development, the New York Stock Exchange proposed a rule filing to declare the election of directors ineligible for broker discretionary voting.¹⁰ The Commission approved this filing, as amended, on July 1, 2009.¹¹ Correspondingly, CBOE proposes to amend CBOE Rule 31.85 to add all elections of directors at shareholder meetings whether contested or not, except for companies registered under the 1940 Act, to the list of enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.

CBOE also proposes to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment advisor for which shareholder approval is required by the 1940 Act and the rules thereunder. These proposed amendments will help ensure the full and effective voting rights of investment company shareholders on material matters.

⁸ See CBOE Rule 31.85(b).

⁹ See supra note 2 [sic].

¹⁰ See SR-NYSE-2006-92.

¹¹ See supra note 2 [sic].

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”)¹² and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹³ The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be 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. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by ensuring better corporate governance and transparency of the election process for directors and by promoting greater uniformity with the proxy rules of other exchanges.¹⁵ In particular, for Exchange member firms that are also members of other exchanges, confusion might arise as to which exchange’s proxy voting rules are applicable to a company listed on the Exchange if there are disparities between proxy voting rules of different exchanges.¹⁶ The proposed rule change will better enfranchise shareholders and enhance corporate governance and accountability to shareholders.¹⁷

¹² 15 U.S.C. 78s(b)(1).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Securities Exchange Act Release No. 34-61292 (January 5, 2010), 75 FR 1664 (January 12, 2010) (SR-NYSEAmex-2009-93).

¹⁶ See supra note 12 [sic].

¹⁷ See supra note 2 [sic].

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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 solicited or received with respect to the proposed rule change.

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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) by its terms, 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 investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)(iii) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied the pre-filing requirement.

²² 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated that the proposal is based upon the rules of NYSE and NYSE Amex. The Exchange stated that waiver of the 30-day operative delay will allow the change to become operative immediately and conform to the Commission's desire to eliminate any disparities involving voting.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.²⁴ The proposal would permit the Exchange to comply with the Commission's stated goal that self-regulatory organizations who currently allow members to use discretionary voting for director elections conform their rules to the NYSE's rules to eliminate any voting disparities depending on where the shares are held. Further, the proposal would conform the Exchange's rule to the NYSE's rule with respect to voting on investment advisory contracts. Moreover, the Commission notes that the NYSE's adopted rule changes were subject to full notice and comment, and considered and approved by the Commission.²⁵ Based on the above, the Commission finds that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest and the proposal is therefore deemed effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ See supra note 5.

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 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-CBOE-2010-027 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-CBOE-2010-027. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing 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-CBOE-2010-027 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.²⁶

Florence E. Harmon
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).