

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72909; File No. SR-CHX-2014-13)

August 25, 2014

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a General Prohibition against Affiliation between the Exchange and any Participant

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on August 18, 2014, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

CHX proposes to adopt Article 3, Rule 20 that establishes a general prohibition against affiliation between the Exchange and any Participants. The text of this proposed rule change is available on the Exchange’s website at (www.chx.com) 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 changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes to adopt Article 3, Rule 20 (No Affiliation between Exchange and any Participant). The purpose of the proposed rule is to guard against any possibility that the Exchange may exercise, or forbear to exercise, regulatory authority with respect to an affiliated Participant⁴ in a manner that is influenced by commercial considerations and to provide an opportunity for Commission review of certain proposed affiliations.

Specifically, the proposed rule provides that the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a Participant in the absence of an effective filing under Section 19(b) of the Act.⁵ The proposed rule defines “affiliate” with reference to Rule 12b-2 under the Act.⁶ In addition, in order to make it clear that the obligation to avoid affiliations applies to both the Exchange and its Participants, the proposed rule also provides that a Participant shall not be or become an affiliate of the

⁴ CHX Article 1, Rule 1(s) provides, in pertinent part, that “‘Participant’ means, except as otherwise described in these Rules, any Participant Firm that hold a valid Trading Permit” and that a “Participant shall be considered a ‘member’ of the Exchange for the purposes of the Exchange Act.”

⁵ 15 U.S.C. 78s(b).

⁶ Rule 12b-2 under the Act provides the following definition of “affiliate”:
Affiliate. An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. 17 CFR 240.12b-2.

Exchange, or an affiliate of any affiliate of the Exchange, in the absence of an effective filing under Section 19(b) of the Act.⁷

Moreover, the proposed rule provides that nothing in this proposed rule shall prohibit a Participant or its affiliate from acquiring or holding an equity interest in CHX Holdings, Inc. that is permitted by the ownership and voting limitation contained in the Certificate of Incorporation of CHX Holdings, Inc. Specifically, paragraph (b)(ii)(B) of the fifth section of the Certificate of Incorporation of CHX Holdings, Inc. provides that no Person, either alone or together with its Related Persons,⁸ who holds a trading permit of the Exchange (*i.e.*, a Participant), may own, directly or indirectly, of record or beneficially shares of stock of CHX Holdings, Inc. representing in the aggregate more than twenty percent (20%) of the then outstanding votes entitled to be cast on any matter.

The proposed rule also limits possible expansive interpretations of the term “affiliate” by providing that nothing in the proposed rule shall prohibit a Participant from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such Participant or any officer, director, manager, managing member, partner or affiliate of such Participant being or becoming either (a) a Director (as such term is defined in the Bylaws of the

⁷ 15 U.S.C. 78s(b).

⁸ Paragraph (a)(ii) of the fifth section of the Certificate of Incorporation of CHX Holdings, Inc. states as follows: the term “Related Persons” shall mean (A) with respect to any Person, all “affiliates” and “associates” of such Persons (as such terms are defined in Rule 12b-2 under the Securities and Exchange Act of 1934, as amended); (B) with respect to any Person that holds a permit issued by the Chicago Stock Exchange, Inc. to trade securities on the Chicago Stock Exchange (“Participant”), any broker or dealer with which a Participant is associated; and (C) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation.

Exchange) pursuant to the Bylaws of the Exchange, or (b) a Director serving on the Board of Directors of CHX Holdings, Inc.

The Exchange believes that it is currently in compliance with the proposed rule. The Exchange and CHXBD, LLC are both wholly owned subsidiaries of CHX Holdings, Inc. (together “CHX affiliates”). None of the CHX affiliates have an ownership interest in a Participant and neither CHX Holdings, Inc. nor CHXBD, LLC are Participants.⁹ Moreover, although some Participants currently hold an equity interest in CHX Holdings, Inc., as currently permitted and limited by the Certificate of Incorporation of CHX Holdings, Inc., the Exchange does not believe that any of these Participants are affiliated with the Exchange or any affiliate of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change to adopt a general prohibition of affiliation between the Exchange and any Participant is consistent with Section 6(b) of the Act in general¹⁰ and furthers the objectives of Section 6(b)(5) in particular,¹¹ because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments to, and perfect the mechanisms of, a free and open market

⁹ CHXBD, LLC is a registered broker-dealer and member of the Financial Industry Regulatory Authority. However, CHXBD, LLC is not yet a Participant of the Exchange nor is it operational. The Exchange intends to operate CHXBD, LLC as an outbound routing facility of the Exchange only upon adoption of effective rules pursuant to Rule 19b-4 under the Act and notice to Participants. See 17 CFR 240.19b-4. In addition, CHXBD, LLC will only become a Participant of the Exchange pursuant to an effective filing under Section 19(b) of the Act. See 15 U.S.C. 78s(b).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

and, in general, by protecting investors and the public interest. Specifically, the proposed rule would guard against any possibility that the Exchange may exercise, or forbear to exercise, regulatory authority with respect to an affiliated Participant in a manner that is influenced by commercial considerations by (1) establishing a general prohibition on affiliation between the Exchange and Participants and (2) requiring an effective filing pursuant to Section 19(b) of the Act¹² before the Exchange acquires or maintains an ownership interest in a Participant or a Participant becomes affiliated with the Exchange or any of its affiliates.

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

The Exchange does not believe that the proposed rule change implicates any competitive issues because the proposed rule only addresses the relationship between the Exchange and its Participants.

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 Change and Timing for Commission Action

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.¹⁵ The Exchange states the purpose of the proposed rule is to guard against any possibility that the Exchange may exercise, or forbear to exercise, regulatory authority with respect to an affiliated Participant in a manner that is influenced by commercial considerations and to provide an opportunity for Commission review of certain proposed affiliations,¹⁶ and that waiver of the 30-day operative delay will allow the Exchange to provide immediate transparency concerning its position on affiliations with Participants.¹⁷ The Commission also notes that the proposed rule is consistent with the rules of other national securities exchanges previously approved by the Commission.¹⁸ For these reasons, the Commission believes that waiving the 30-day operative

designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ See, e.g., Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (approving the registration of BATS Exchange as a national securities exchange) ("BATS Exchange Approval"), at 49502 n.90 and accompanying text.

¹⁶ See supra note 4 and accompanying text.

¹⁷ See SR-CHX-2014-13, Item 7.

¹⁸ See, e.g., BYX Rule 2.10 and Nasdaq Rule 2160(a); BATS Exchange Approval, supra note 15; and Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (approving Nasdaq's rule restricting affiliations between Nasdaq and its members).

delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁹

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. Please include File Number SR-CHX-2014-13 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CHX-2014-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also 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 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 Number SR-CHX-2014-13 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).