

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63917; File No. SR-CBOE-2011-017)

February 16, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Amend an Exchange Rule Relating to Giving Proxies

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 February 10, 2011 the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend its proxy voting rules in accordance with provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The text of the rule proposal is available on the Exchange’s website (<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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Section 957 of the Dodd-Frank Act adopted new Section 6(b)(10) of the Act,³ which requires the rules of each national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 of the Act⁴ from granting a proxy to vote the security in connection with certain shareholder votes, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The shareholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (the “Investment Company Act”), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.⁵

Accordingly, in order to carryout the requirements of Section 957 of the Dodd-Frank Act, the Exchange is proposing to amend CBOE Rule 31.85, Giving Proxies by TPH Organizations, which governs when Trading Permit Holder Organizations (“TPH

³ 15 U.S.C. 78f(b)(10).

⁴ 15 U.S.C. 78l.

⁵ 15 U.S.C. 78f(b)(10)(B).

Organizations”) may and may not give a proxy to vote stock without instructions from the beneficial owner of the shares. First, Item 19 of CBOE Rule 31.85(b) already prohibits TPH Organizations from giving a proxy to vote shares without instructions from beneficial owners when the matter to be voted upon is the election of directors (other than in the case of an issuer registered under the Investment Company Act, provided the matter is not the subject of a counter-solicitation). Therefore the Exchange is proposing to simply amend Item 19 so that the text is consistent with the language in Section 6(b)(10)(B) of the Act.⁶

Second, the Exchange proposes to add new Item 21 (and related commentary) to CBOE Rule 31.85(b) to provide that a TPH Organization may not give a proxy or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon relates to executive compensation. The proposed commentary to Item 21 would clarify that a matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Act (added by Section 951 of the Dodd-Frank Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a TPH Organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the

⁶ See 15 U.S.C. 78f(b)(10)(B).

requirements of Item 12, Item 13 or any other Item under CBOE Rule 31.85. Any vote on these or similar executive compensation-related matters would be subject to the requirements of CBOE Rule 31.85, as amended.⁷

Third, the Exchange proposes to add new Item 22 to Rule 31.85(b) to provide that a TPH Organization may not give a proxy or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon involves any other significant matter, as determined by the Commission, by rule.⁸

Fourth, the Exchange is proposing to add the words “or authorize” in certain places throughout CBOE Rule 31.85 to clarify that the rule includes not only the giving of a proxy but also the authorization of such proxy.

Finally, the Exchange is proposing to amend Appendix A to the rules of the CBOE Stock Exchange, LLC (“CBSX,” the CBOE’s stock trading facility). Appendix A lists the rules contained in Chapters 1 through 29 of the Exchange Rules that are applicable to the trading of equity securities on CBSX. The Exchange is proposing to amend Appendix A to include a cross reference to CBOE Rule 31.85 in order to make clear that CBOE Rule 31.85 regarding the giving of proxies by TPH Organizations applies to CBSX TPH Organizations as well as CBOE TPH Organizations.

2. Statutory Basis

⁷ The Exchange is also proposing to add cross-referencing commentary related to new Item 21 in Items 12 and 13. The Exchange is also proposing a non-substantive change to include a heading for the commentary to Item 20 so there is consistent formatting of the various commentaries that appear throughout the rule.

⁸ The Exchange notes that the Commission has not at this time identified other significant matters with respect to which TPH Organizations should be prohibited from voting uninstructed shares.

The Exchange believes the proposed rule change is consistent with the Act⁹ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(10)¹¹ requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting the proposed rule changes to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule changes to be consistent with Section 6(b)(5) of the Act, particularly with respect to the protection of investors and the public interest. Finally, the Exchange believes the proposed changes to Appendix A of the CBSX Rules to incorporate a cross reference to CBOE Rule 31.85 is consistent with Section 6(b)(5) of the Act, particularly with respect to the protection

⁹ 15 U.S.C. 78a *et seq.*

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(10).

¹² 15 U.S.C. 78f(b)(5).

of investors and the public interest, because the changes would make it clear that CBOE Rule 31.85 (regarding the giving of proxies by TPH Organizations) applies to CBSX TPH Organizations as well as CBOE TPH Organizations.

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

The Exchange neither solicited nor received comments on the proposal.

III. 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-2011-017 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-2011-017. 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 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2011-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis. The Exchange stated that it believed good cause existed to grant accelerated approval because Section 957 of the Dodd-Frank Act does not provide for a transition period and because the proposed rule text is based upon New York Stock Exchange ("NYSE") Rule 452.¹³

¹³ See Securities Exchange Act Release 62874 (September 9, 2010), 75 FR 56152 (September 15, 2010).

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ The Commission believes that the proposal is consistent with Section 6(b)(10)¹⁵ of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)¹⁶ of the Act, which provides, among other things, that the rules of the Exchange must be designed to 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that “final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected

¹⁴ In approving this rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(10).

¹⁶ 15 U.S.C. 78f(b)(5).

by the wishes of the broker that holds the shares.”¹⁷ The proposed rule change will make CBOE rules compliant with the new requirements of Section 6(b)(10) by prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares with respect to any matter on executive compensation or any other significant matter, as determined by the Commission, by rule.¹⁸

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.¹⁹

The Commission notes that the CBOE’s new rule prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act, as well as any other matter concerning executive compensation, and has

¹⁷ See S. Rep. No. 111-176, at 136 (2010).

¹⁸ As noted above, Section 6(b)(10) also prohibits broker voting for director elections, except for uncontested director elections of registered investment companies. The Commission notes that the Exchange already prohibits broker voting in director elections except for uncontested director elections for registered investment companies and is merely proposing to amend Item 19 so that the text is consistent with the language in Section 6(b)(10) of the Act. See CBOE Rule 31.85(b)(19). As to other matters, as determined by the Commission, by rule, the Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

¹⁹ As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

been drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The proposed rule language also specifically states that a broker vote on any executive compensation matter would not be permitted even if it would otherwise qualify for an exception from any item under Rule 31.85. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

Finally, the Commission notes that the changes to reflect (i) that the CBOE rules prohibit not only the giving of a proxy, but also the authorization of the proxy and (ii) that CBOE Rule 31.85 regarding the giving of proxies by TPH Organizations applies to CBSX TPH Organizations as well as CBOE TPH Organization, should help to clarify the intent of the CBOE proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the Exchange's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. As noted above, Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant

²⁰ 15 U.S.C. 78s(b)(2).

accelerated approval to the Exchange's proposal, because it will conform CBOE Rule 31.85 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.²¹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-CBOE-2011-017) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Cathy H. Ahn
Deputy Secretary

²¹ See note 13, *supra*.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).