

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61733; File No. SR-CHX-2010-06)

March 18, 2010

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CHX Article 8, Rule 14 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 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on March 9, 2010, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. 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

CHX proposes to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner. The text of this proposed rule change is available on the Exchange’s Web site at www.chx.com and in the Commission’s Public Reference Room.

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).

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 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 Changes

1. Purpose

The CHX is proposing to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner.

Under the current CHX and SEC proxy rules, Participants must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day preceding the meeting date, Rule 14 provides that Participants may vote on certain matters deemed "routine" by the CHX. One of the most important results of Participant votes of uninstructed shares is their use in establishing a quorum at shareholder meetings.

At present, matters considered routine by the CHX are those in which the person signing the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action does not include authorization for a merger, consolidation or any other

matter which may affect substantially the legal rights or privileges of such stock. In addition to this guidance, CHX rules specifically state that a Participant may not give a proxy to vote when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.

With this rule filing, CHX would like to amend its rules to conform to the NYSE's rules⁵ to eliminate any disparities involving voting depending on where the shares are held.⁶ CHX would also like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner. These include: any matter that is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of Securities and Exchange Commission; any matter that is the subject of a counter-solicitation or is part of a proposal made by a stockholder which is being opposed by management (i.e. a contest); any matter that relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal); and, matters that involve a right of appraisal. Additionally, matters that authorize mortgaging of property, authorize or create indebtedness or increase the authorized amount of indebtedness, authorize or create a preferred stock or increase the authorized amount of an existing preferred stock or alter the terms or conditions of existing stock or indebtedness will also be prohibited from being voted by a Participant without instruction.

⁵ See NYSE Rule 452.

⁶ The Commission has indicated that, while other self-regulatory organizations currently allow discretionary voting, it expects these markets to make changes to conform to the NYSE's rules to eliminate any disparities involving voting depending on where shares are held. See Securities Exchange Act Release No. 34-60215 (July 1, 2009).

Other matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner are those involving a waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares), those changing existing quorum requirements with respect to stockholder meetings, those altering voting provisions or the proportionate voting power of a stock, or those altering the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one).

Additionally, Participants will be prohibited from voting, absent instructions, on any matter that authorizes a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years or the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes; however, exceptions may be made to these general prohibitions in the cases of retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions) and any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union negotiated plan.

Further matters that may not be voted by Participants without the beneficial owner's instructions include: those that change the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated

intention to make such a change; those that authorize the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares; those that authorize the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction; those that authorize a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest; and, those that reduce earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

The Exchange also believes that Participants should not vote uninstructed stock for the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940.

Finally, the Exchange proposes to prohibit voting, without instruction from the beneficial owner, on material amendments to an investment advisory contract with an investment company. The Exchange will also add commentary on this item indicating 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 adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this rule so that a Participant may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a Participant may not give a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory

contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

The Exchange notes that the foregoing matters are substantially similar to the list of matters that have been adopted by the New York Stock Exchange and that have been previously approved by the Commission.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,⁸ and furthers the objectives of Section 6(b)(5) in particular,⁹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by allowing CHX to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. The Exchange believes that certain matters that affect substantially the rights and privileges of stock should not be voted on by Participants without instructions from the beneficial owner.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ See NYSE Rule 452 ... Supplementary Material .11

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

upon filing. In making this request, the Exchange stated that the proposal is based upon the rules of NYSE.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.¹⁶ 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 update and conform the Exchange's proxy voting rule to reflect the recent changes to NYSE's rule on broker discretionary voting on the election of directors, as well as material amendments to investment advisory contracts. Moreover, the Commission notes that these recent changes to NYSE's rules were subject to full notice and comment, and considered and approved by the Commission.¹⁷ 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹⁶ 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).

¹⁷ See supra note 6.

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-2010-06 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-CHX-2010-06. 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-CHX-2010-06 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).