

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50201; File No. SR-CHX-2004-21)

August 16, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Transfer of CHX
Memberships

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 5, 2004, the Chicago Stock Exchange, Inc. (“CHX” or “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 Exchange. The CHX filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange is proposing to add Interpretation and Policy .03 to CHX Article I, Rule 10, “Transfers of Memberships,” which would effectively prohibit the transfer of CHX memberships until uniform disclosure regarding a proposed demutualization transaction that has been approved by the Exchange’s Board of Governors is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

disseminated to owners of CHX seats. The text of the proposed rule change appears below. Proposed new language is italicized.

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ARTICLE I
Membership

Transfers of Memberships

RULE 10. A membership is a privilege which cannot be transferred until the transferee shall have been elected a member or member organization. All bids for, and offerings of, memberships shall be submitted to and will be processed by the Exchange in accordance with procedures that shall from time to time be established by the Executive Committee. All contracts for the sale of memberships shall be approved by the Exchange. A sale or transfer of a membership without Exchange approval shall confer no rights on the purchaser or transferee to become a member, to exercise any rights of membership or otherwise to deal on or with the Exchange on a basis other than that of a non-member. Transference pursuant to Article IA, whereby the transferor retains the right to reacquire the membership, must be in accordance with the requirements of the Exchange and the terms of all such arrangements must be approved by the Exchange. A sale or transfer of a membership, including transfers pursuant to Article IA, shall not be approved by the Exchange if the transferee (or the Lessor in the case of transfers pursuant to Article IA), together with any person who directly or indirectly controls or is controlled by, or is under common control with, the transferee or Lessor, as the case may be, owns or has the voting power of 10% or more of the outstanding memberships of the Exchange, unless this requirement is waived by the Board for good cause shown.

••• Interpretations and Policies:

.01 The Executive Committee has adopted the following procedure for processing transfers of memberships:

All bids for, and offerings of, memberships will be submitted to, and processed by, the Exchange's Membership Department. No private negotiations and/or sales of memberships will be allowed without the written approval of the Exchange, and any sale contracts resulting from such private negotiations may be nullified by the Exchange.

Applicants for membership will not be permitted to enter a bid for a membership until the staff has determined from the application submitted that no statutory bar to membership exists or, in the case of Approved Lessors, that they have complied with all prerequisites to becoming an Approved Lessor as set forth in the Rules.

Any contract for the sale of a membership, which contract has been made by the Exchange on behalf of the buyer and seller, will remain in force for the ten business days next following the date on which the contract was executed. Such contract will be extended beyond the original termination date only if both parties agree in writing to such an extension and to a new termination date.

.02 Transfers, pursuant to Article IA, whereby the transferor retains the right to reacquire the membership, will not be processed by the Exchange's Membership Department unless the transferor is current in all filings and payments of dues, fees and charges relating to that membership, including filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation.

.03 Suspension of Membership Market. Effective August 5, 2004, the Exchange will not approve the transfer of a membership by any member or approved lessor. This prohibition shall remain in effect until the earlier of (a) the date of issuance (to CHX members and approved lessors) of disclosure documents relating to a proposed demutualization transaction or (b) the Exchange's determination that it will not seek approval of a demutualization transaction.

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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

On August 5, 2004, the Exchange's Board of Governors voted unanimously to present a demutualization plan to the Exchange's members for approval.⁵ A CHX member vote on the demutualization plan will be scheduled for October 2004. If the

⁵ As with other similar demutualization transaction approved previously by the Commission, the Exchange's proposed demutualization transactions contemplate a change in the Exchange's organizational structure. In this demutualization transaction, the CHX will change from a not-for-profit, non-stock corporation owned by its members to become a wholly-owned subsidiary of a holding company, CHX Holdings, Inc., which is to be organized as a for-profit, stock corporation owned by its stockholders. Members of the CHX at the time of the demutualization transaction will receive shares of common stock of the new holding company in exchange for their CHX memberships, and thus will become the stockholders of the new holding company. Members who are qualified to trade on the Exchange will receive trading permits that give them continued access to the Exchange's trading facilities.

Exchange's members vote in favor of demutualization, the Exchange anticipates that it will then formally seek the Commission's approval of the Exchange's demutualization plan, including related changes to the Exchange's constitution, bylaws and rules.

The Exchange plans to distribute to its members, sufficiently in advance of the October demutualization vote, a comprehensive information memorandum and other materials (collectively, the "Disclosure Documents") that will apprise Exchange members of their respective rights and obligations before and after demutualization. The Exchange currently is preparing the Disclosure Documents but will not be in a position to circulate these materials to CHX members until early to mid-September.

The Exchange believes that, in the interim, certain CHX members may have (or may be perceived to have) access to varying levels of information (with varying degrees of accuracy) regarding the proposed demutualization transaction. Accordingly, to preclude any inequity that could arise as a result of potentially disparate access to accurate information, the Exchange believes that it is appropriate to suspend its membership market (also referred to as the CHX "seat" market) immediately. The Exchange believes that suspension of the seat market will help ensure that members are not purchasing or selling memberships prior to demutualization on the basis of information that may not be available to all members or on the basis of inaccurate information that a member has received through informal communications channels.

The proposed new Interpretation and Policy .03 relating to CHX Article I, Rule 10 would effectively prohibit transfer of memberships by CHX members, effectively immediately. This prohibition would remain in effect until the Disclosure Documents are disseminated to CHX seat owners. If for some reason the Exchange declines to proceed

with the demutualization initiative prior to dissemination of the Disclosure Documents, the prohibition would terminate immediately.

2. Statutory Basis

The CHX believes the proposed rule change 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).⁶ In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding 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

Because the foregoing proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

existing rule,⁸ it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and Rule 19b-4(f)(1) thereunder.¹⁰ 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.

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 2004-21 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

⁸ Pursuant to CHX Article I, Rule 10, all bids for and offers of memberships must be submitted to, and processed by, the Exchange in accordance with procedures established by the Executive Committee. The Exchange must approve all contracts for the sale of memberships. The Executive Committee, pursuant to direction from the Board of Governors, has adopted a policy of not approving any contracts for the sale of memberships during the brief, temporary period between the approval by the Board of the demutualization transaction and the issuance of the Disclosure Documents. This temporary halt in the processing of membership transfers is intended to ensure that the membership transfer process is fair and is based on equivalent disclosure of information about the demutualization transaction. Accordingly, the policy constitutes a stated policy as to the administration and enforcement of the membership transfer procedures set forth in CHX Article I, Rule 10.

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

All submissions should refer to File Number SR-CHX-2004-21. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-21 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).