

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56573; File No. SR-CHX-2007-16)

September 28, 2007

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto to Amend its Bylaws to Confirm that an Exchange Director Cannot Participate in the Determination of any Matter Involving an Issuer of a Security Listed or to Be Listed on the Exchange, if the Director Is a Director, Officer, or Employee of the Issuer

I. Introduction

On July 27, 2007, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article II, Section 7 of its bylaws to confirm that, a CHX director cannot participate in the determination of any matter involving an issuer of a security listed or to be listed on the Exchange, if the CHX director is a director, officer, or employee of the issuer. On August 10, 2007, CHX filed an amendment to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 24, 2007.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CHX bylaws currently prohibit a CHX director from participating in the determination of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Partial Amendment No. 1, the Exchange stated when a director recuses himself or herself from a decision, the Exchange would reflect that recusal in the minutes of the meeting at which the recusal occurred, in accordance with its internal written policies.

⁴ See Securities Exchange Act Release No. 56281 (August 17, 2007), 72 FR 48708.

any matter in which the CHX director is personally interested. In its filing, CHX stated that the proposal would add a clarification to its bylaws by confirming certain situations when a CHX director would be deemed “personally interested” in a matter involving an issuer of a security listed or to be listed on the Exchange. Specifically, under the proposal a CHX director is deemed “personally interested” when the CHX director is a director, officer, or employee of the issuer of the security listed or to be listed on the Exchange. Further, this proposed provision is non-exclusive and the proposed changes to the bylaws specifically state that CHX would evaluate other relationships between the CHX director and the issuer on a case-by-case basis.

III. Discussion

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to 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.

The Commission notes that CHX’s bylaws currently prohibit a CHX director from participating in the determination of any matter in which the CHX director is personally interested. However, in a matter involving an issuer of a security listed or to be listed on the Exchange, CHX’s bylaws do not specify under what situations the CHX director would be

⁵ In approving the proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

deemed personally interested. The proposal would specifically state that a CHX director could not participate in a matter involving an issuer listed or to be listed on the Exchange if the CHX director is a director, officer, or employee of the issuer. As noted above, this is not an exclusive list defining all situations involving an issuer and a CHX director in which a CHX director would be deemed “personally interested” and shall not participate in a matter pursuant to CHX bylaws. Under the proposal, CHX would evaluate other relationships between a CHX director and an issuer on a case-by-case basis. Examples of other situations the Commission would expect to involve a personal interest would include, among others, when a CHX director is serving as a consultant to an issuer, is a significant shareholder of the issuer or has some other relationship with the issuer. Moreover, CHX represented that when CHX directors recuse themselves from a decision, CHX would reflect such recusals in the minutes of the meeting in which the recusal occurs, consistent with CHX’s internal written policies.

The Commission believes that it is good corporate practice for CHX to confirm in its bylaws certain situations when an Exchange director is deemed personally interested in a matter involving an issuer of a security listed or to be listed on CHX and to reflect recusals in the minutes of the meetings in which the recusal occurs. This will help to ensure that matters involving the listing and delisting of issuer’s securities on CHX is considered in a fair and impartial manner which furthers the protection of investors and the public interest consistent with Section (6)(b)(5) of the Act. Based on the above, the Commission believes that the proposal is consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CHX-2007-16) as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).