

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56281; File No. SR-CHX-2007-16)

August 17, 2007

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto to Amend its Bylaws to Prevent Exchange Director from Participating 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 27, 2007, 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 substantially prepared by CHX. On August 10, 2007, CHX filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

CHX proposes to amend its bylaws to bar a director from participating in a matter relating to an issuer of a security, if the director is a director, officer or employee of the issuer of that security. The text of this proposed rule change is available on the Exchange’s Web site at [http://www.chx.com/content/Participant\\_Information/Rules\\_Filings.html](http://www.chx.com/content/Participant_Information/Rules_Filings.html), at the Office of the Secretary of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Partial Amendment No. 1 modified the last sentence of footnote 6 below, to state that when a director recuses himself or herself from a decision, the Exchange reflects that recusal in the minutes of the meeting at which the recusal occurred, in accordance with its internal written policies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

Under the Exchange's rules, if the Exchange proposes to delist a security, the issuer of the security has the right to avail itself of a hearing before a hearing officer and to appeal the decision of the hearing officer to the Exchange's Executive Committee.<sup>4</sup> The Exchange's Executive Committee is composed entirely of Exchange directors.<sup>5</sup>

Although the Exchange's bylaws generally prevent a director from participating in the determination of any matter in which the director is personally interested, no provision of the bylaws specifically confirms that a director should not participate in a decision involving the issuer of a security if he or she is a director, officer or employee of the issuer. This proposed change would add a clarification to the Exchange's bylaws to confirm that, in a matter involving the issuer of a security listed or to be listed on the Exchange, a director shall be deemed to be personally interested in the matter if he or she is a director, officer or employee of the issuer of

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<sup>4</sup> See Article 25, Rule 4 of CHX's bylaws.

<sup>5</sup> See Article 2, Rule 2 of CHX's bylaws. The committee must consist of not less than five members, plus the chairman of the Board. A majority of the committee members must be public directors. Id.

the security.<sup>6</sup> The Exchange believes that this new provision appropriately limits a director's ability to participate in proceedings involving a company for which he or she serves as a director, officer or employee.<sup>7</sup>

## 2. Statutory Basis

CHX believes the proposal 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) of the Act.<sup>8</sup> The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> because it would 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, protect investors and the public interest by confirming

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<sup>6</sup> This proposal is a slightly-amended version of the proposal originally made in SR-CHX-2006-25, which has been withdrawn. In this new version of the proposal, the Exchange, at the recommendation of Commission staff, has expanded its original filing to cover all proceedings involving an issuer of a security, instead of limiting the proposal only to delisting proceedings. Importantly, however, this proposal is not designed to affect other provisions of this section of the bylaws; specifically, this proposal is not designed to prevent a participant director who is an employee of an issuer that is also a participant firm from participating in the determination of matters that may affect participants as a whole or certain groups of participants, as already expressly permitted by the bylaws. See Article II, Section 7 of the CHX's bylaws.

In this revised version of the original proposal, the Exchange also has confirmed that, although it will typically deem a director to be "personally interested" in a matter relating to an issuer if the director is a director, officer or employee of that issuer (subject to the exception described above), the Exchange will review other relationships between a director and an issuer on a case-by-case basis to determine whether inappropriate personal interest exists. When a director recuses himself or herself from a decision, the Exchange reflects that recusal in the minutes of the meeting at which the recusal occurred, in accordance with its internal written policies.

<sup>7</sup> This bylaws change is also consistent with a recommendation made by the Commission's Office of Compliance Inspections and Examinations.

<sup>8</sup> 15 U.S.C. 78(f)(b).

<sup>9</sup> 15 U.S.C. 78(f)(b)(5).

that an Exchange director should not participate in proceedings involving a company for which he or she serves as a director, officer or employee.

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

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

C. Self-Regulatory Organization's Statement on Comments on 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 Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2007-16 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CHX-2007-16. 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 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 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-2007-16 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.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).