

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 has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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) <sup>18</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>19</sup> As required under Rule 19b-4(f)(6)(iii),<sup>20</sup> the Exchange provided the Commission with written notice of its 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 the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) <sup>21</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) <sup>22</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>23</sup> which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.<sup>24</sup>

Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-076 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-BX-2009-076. 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 a.m. and 3 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-BX-2009-076 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61053; File No. SR-CHX-2009-15]

**Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Change by Chicago Stock Exchange, Inc. to Its Bylaws and Those of Its Parent Corporation, CHX Holdings, Inc.**

November 23, 2009.

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 November 13, 2009, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") 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 CHX. CHX filed this proposal pursuant to Rule 19b-4(f)(6) under the Act<sup>3</sup> and requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).<sup>4</sup>

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

CHX proposes to amend its Bylaws and those of its parent corporation, CHX Holdings, Inc. ("CHX Holdings") to eliminate an age restriction for Directors. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in the Commission's Public Reference Room.

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> *Id.*

<sup>24</sup> 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).

## 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 Exchange proposes to remove the current age restriction relating to Directors in its Bylaws and in the Bylaws of the Exchange's parent corporation. The Bylaws of both the Exchange and CHX Holdings currently provide that no Director who is 71 years old or over is eligible to begin a term of office, although he or she may complete a term if elected prior to reaching age 71. The Exchange notes that certain existing Directors of both corporations will be impacted by this restriction in the near future. The forced departure of those Directors could negatively impact the Exchange and its parent, due to the loss of their knowledge and experience. The Exchange also has received expressions of interest from persons above the age of 71 to be nominated to stand for election as a Director of one or both corporations and has had to turn them away due to the age restriction. The Exchange believes that there it would be beneficial to be able to consider the candidacy of such persons without regard to their age. The removal of the age restrictions would be consistent with the provisions of the bylaws of other national securities exchanges.<sup>5</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>6</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>7</sup> 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 removing the age restriction from its bylaws and those of CHX Holdings, the Exchange hopes to attract and retain additional qualified candidates for service as Directors.

### B. Self-Regulatory Organization's Statement on 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.

### 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 Changes and Timing for Commission Action

Because the foregoing 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) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposed removal of age restrictions relating to Directors are consistent with exchange bylaws the Commission has approved in the past

and does not raise any new regulatory issues.<sup>12</sup> The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2009-15 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-2009-15. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) under the Act requires a self-regulatory organization to give the Commission written notice of its intent to file 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. CHX has complied with this requirement.

<sup>11</sup> *Id.*

<sup>12</sup> See note 5 *supra*. For board composition of a parent company of an exchange, see e.g., Bylaws of BATS Global Markets, Inc., Article III, § 3.01.

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> See, e.g., Bylaws of BATS Exchange, Inc., Article III, § 3(b) (Terms of Office); Bylaws of National Stock Exchange, Inc., Article III, § 3.4 (Terms of Office); Constitution of the Chicago Board Options Exchange, Inc., Article VI, § 6.1 (Number, Election and Term of Office of Directors).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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 publicly available. All submissions should refer to File Number SR-CHX-2009-15 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61048; File No. SR-NYSE-2009-112]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Rescinding Information Memoranda 04-27 and 07-66 and Issuing a New Information Memo Concerning the Exchange's Gap Quote Policy

November 23, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 9, 2009, the New York Stock Exchange LLC ("NYSE" or the "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 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 proposes to rescind NYSE Information Memoranda ("Information Memo") 04-27 and 07-66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the

Exchange's Gap Quote Policy (the "Policy"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule changes is to rescind Information Memos 04-27 and 07-66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Policy.<sup>4</sup>

The principal change to the Policy is a reduction in the minimum size (from at least 10,000 shares to at least 5,000) and value (from \$200,000 or more to \$100,000 or more) requirements for publishing a gap quote. In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote. Finally, the Exchange proposes adding language clarifying or reminding members of certain aspects of the Policy and other technical or non-substantive changes.

In order to ensure an orderly transition to usage of the new parameters, the Exchange proposes that these changes be made operative within ten business days after the approval of this filing.

###### Background

The purpose of the Policy, described in greater detail below, is to provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting

orders or the cancellation of orders on the side of an imbalance.

An order imbalance may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest.

When an imbalance in a security exists, the Policy provides that the Designated Market Maker ("DMM") for the security should widen the spread between the bid and offer—a process known as "gapping the quote."<sup>5</sup> The use of a gap quote signals the existence of the imbalance to the market in order to attract contra-side liquidity and mitigate volatility.

Gap quotes occur more frequently in securities that are illiquid or thinly traded than in securities that are very liquid or heavily traded.<sup>6</sup>

###### History

In 2004, the Exchange updated its policies and procedures for gapping the quote, which had previously been implemented in 1994.<sup>7</sup> The Exchange announced the updated policy through a new Information Memo 04-27 (June 9, 2004), which it also filed with the Commission.<sup>8</sup> In 2007, the Exchange changed the minimum size and value requirements for use of gap quotes to at least 10,000 shares or \$200,000, and updated the policies and procedures to reflect technical changes to the market and Exchange systems.<sup>9</sup>

###### The Current Policy

Under the current Policy, a gapped quotation consists of, on one side, a bid or offer for the amount representing the amount of the imbalance in the market priced at the price of the last sale, and, on the side of the market opposite the imbalance, an offer or bid for 100 shares, priced at the price at which the DMM believes the stock would trade if

<sup>5</sup> The current version of the Policy contained in Information Memo 07-66 refers to "specialists" and "specialist member organizations." In accordance with the Exchange's adoption of its New Market Model ("NMM"), the Exchange refers herein to "DMMs" and "DMM Units." See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving the NMM).

<sup>6</sup> Currently, it is not cost-effective for the Exchange to implement stock-specific gap quote procedures.

<sup>7</sup> See Information Memo 94-32 (August 9, 1994).

<sup>8</sup> See Securities Exchange Act Release No. 50237 (August 24, 2004), 69 FR 53123 (August 31, 2004) (SR-NYSE-2004-37) (concerning Information Memo 04-27).

<sup>9</sup> See Information Memo 07-66 (July 5, 2007). This Information Memo was not filed with the Commission.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), has submitted an identical companion filing updating its Gap Quote Policy governing equities trading. See SR-NYSE-Amex-2009-82. The proposed new Information Memo will be jointly issued by both the Exchange and NYSE Amex.