

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. 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-BSE-2006-36 and should be submitted on or before October 23, 2006.

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54505; File No. SR-BSE-2006-40]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Information Submitted to the Exchange

September 26, 2006.

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 September 15, 2006, the Boston Stock Exchange, Inc. ("BSE" or "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 the Exchange. The BSE has filed the proposed rule change, pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 proposes to amend Section 15 (Audit Trail) of Chapter V of the Rules of the Boston Options Exchange ("BOX") to delete the language that specifically references the two specific participant capacity codes and the three specific customer identification codes. The text of the proposed rule change is available on the BSE's Web site at <http://www.bostonstock.com>, at the principal office of the Exchange and in the Commission's Public Reference Room.

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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The Exchange states that the proposed rule change mimics the Chicago Board Options Exchange ("CBOE") Rule 6.51⁵ and the International Securities Exchange, Inc. ("ISE") Rule 712⁶ and proposes to amend Section 15 (Audit Trail) of Chapter V of the BOX Rules to delete the language that specifically references the two specific participant capacity codes and the three specific customer identification codes.⁷

Chapter V, Section 15 of the BOX Rules requires members to file with BOX order information in such form as may be prescribed by the Exchange. Among the "order information" that the rule requires to be marked on an order

ticket⁸ includes "participant capacity" and "customer identification." The purpose of these marking requirements is primarily twofold. First, participant capacity codes and customer identification codes ensure that orders route to the proper exchange systems, provide the Boston Options Exchange Regulation LLC ("BOXR") with a mechanism by which to surveil whether members are in fact marking orders correctly and provide BOX with customer information. Second, the marking requirements assist the Options Clearing Corporation ("OCC") in the clearance of trades.

BSE currently lists two participant capacity codes in Chapter V, Section 15(b)(vi) of the BOX Rules and three customer identification codes in Chapter V, Section 15(b)(viii) of the BOX Rules.⁹ Because BOX's participant capacity codes and customer identification codes are specifically listed in its rules, each time BOX determines to add, delete, or change a participant capacity code or customer identification code, BSE must submit a rule filing to the Commission. This could require several separate rule filings if BOX decided to add participant capacity codes and customer identification codes at different times.¹⁰

Accordingly, since Chapter V, Section 15(a) of the BOX Rules already provides that "each Options Participant shall submit order information in such form as may be prescribed by BOXR."

* * *,¹¹ BSE proposes to delete the language from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules that references the two specific participant capacity codes and three specific customer identification codes. This change will have two primary effects. First, it would eliminate the need for BSE to submit a rule filing each time BOX adds, deletes or changes a participant capacity code or customer identification code. Second, and more importantly, it would allow BSE to continue to ensure that members submit requisite trade information, including participant capacity codes and customer

⁸ All order tickets are submitted to BOX in electronic form.

⁹ BOX currently uses the following participant capacity codes: (1) Order Flow Provider or (2) Market Maker. See BOX Rules Chapter V, Section 15(b)(vi). BOX currently uses the following customer identification codes: (1) Public Customer; (2) Broker-dealer; or (3) Market Maker. See BOX Rules Chapter V, Section 15(b)(viii).

¹⁰ Over the next few months, the Exchange anticipates adding several new identification codes to the BOX system. This could require the submission of several rule filings if all participant capacity and customer identification codes are not added at the same time.

¹¹ See BOX Rules Chapter V, Section 15(a).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 45226 (January 3, 2002), 67 FR 1383 (January 10, 2002) (SR-CBOE-2001-69).

⁶ See Securities Exchange Act Release No. 43795 (January 3, 2001), 66 FR 2468 (January 11, 2001) (SR-ISE-00-21).

⁷ Currently, BOX Rules Chapter V, Section 15(b)(vi) and (viii) state that order information submitted under BOX Rule Chapter V, Section 15 must include certain specific participant capacity codes and customer identification codes.

identification codes, in an Exchange-dictated manner. BSE notes that the proposed change to Chapter V, Section 15(b)(vi) and (viii) would not eliminate the requirement that members submit tickets with participant capacity codes and customer identification codes. Rather, this change simply eliminates the specific participant capacity codes and customer identification codes from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules. Options Participants would still be required to submit orders with participant capacity codes and customer identification codes as may be prescribed by BOXR.

Upon approval of this filing, BSE will notify members of the current order marking requirements (*i.e.*, valid participant capacity codes and customer identification codes) by regulatory circular. As such, each time BOX adds, deletes, or changes a participant capacity code or customer identification code, BSE will distribute a regulatory circular to the Options Participants apprising them of the change. BSE believes that this will ensure that BOX's Options Participants are aware of the applicable participant capacity codes and customer identification codes with which it must mark order tickets.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange believes that the proposed rule change would enhance BOX's ability to surveil for and investigate potential fraudulent and manipulative conduct. The Exchange further believes that, since the proposed rule change would enhance BOX's ability to conduct investigations and surveil for misconduct, it would protect investors and the public interest.

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 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

BSE requests that the Commission waive both the 30-day pre-operative period specified in Rule 19b-4(f)(6)(iii).¹⁶ The Commission believes that waiving the 30-day pre-operative period is consistent with the protection of investors and public interest. BSE's proposed deletion of the language from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules that references certain specific participant capacity and customer identification codes allows for greater Exchange flexibility in administering its order ticket marking rules while maintaining the underlying requirements. According to the Exchange, this change will eliminate the need for BSE to submit a rule filing each time BOX adds, deletes or changes a participant capacity code or customer identification code and will allow BSE to continue to ensure that members submit requisite trade information, including participant capacity codes and customer identification codes, in an Exchange-dictated manner. The change is also consistent with the approaches used by other self-regulatory organizations.¹⁷ For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁸

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.¹⁹

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-BSE-2006-40 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-BSE-2006-40. 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. Copies of such filing also will be available for inspection and copying at the principal offices 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-BSE-2006-40 and should

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See n. 5-6, *supra*.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁹ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Nancy M. Morris,
Secretary.

[FR Doc. E6-16165 Filed 9-29-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54494; File No. SR-CHX-2006-23]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding Amendments to the Exchange's Bylaws and Other Governance Changes

September 25, 2006.

I. Introduction

On June 22, 2006, 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 its bylaws and rules to make several governance changes. The CHX filed Amendment No. 1 to the proposed rule change on July 20, 2006. The proposed rule change, as amended, was published for comment in the *Federal Register* on August 3, 2006.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CHX proposes changes to its bylaws to reflect the terms of an agreement with four firms ("Investor Firms")⁴ to invest in CHX Holdings, Inc., ("CHX Holdings").⁵ CHX proposes to amend its

bylaws and rules to (1) require the Exchange's Board of Directors ("Board") to identify one position in each Board class as the "Subject to Petition (STP) Participant Director," with candidates for that position to be subject to a petition process involving the Exchange's participants; (2) change the composition of the Exchange's Nominating & Governance Committee to include two public directors and two STP Participant Directors; and (3) modify the Exchange's rules to confirm that each participant firm would need only one trading permit to conduct business on the Exchange.

Governance Changes

The CHX bylaws provide that the CHX Board currently consist of the Exchange's chief executive officer, seven public directors, and five participant directors.⁶ The Board members are divided into three classes, with each class serving a three-year term. Under the terms of the agreements reached with the Investor Firms, the membership of the Board is to be reduced by one director, so that after the closing of the transactions, the Board would consist of the Exchange's chief executive officer, six public directors, and five participant directors. The agreements with the Investor Firms also require the Exchange to use its best efforts to place a representative of each of the Investor Firms on the CHX Board, filling four of the five participant director positions. The remaining participant director would not be affiliated with any of the Investor Firms.

STP Participant Directors

Under the Exchange's existing bylaws, the Nominating & Governance Committee ("Committee") identifies candidates to fill the Board positions that are up for election each year.⁷ In identifying candidates for public

director positions, the Committee typically meets to discuss candidates and provides its slate of nominees to the Exchange's sole stockholder, CHX Holdings, for election.

The process for identifying candidates for participant director positions, however, is more detailed and includes both a requirement that the Committee hold two open meetings with Exchange participants and a petition process that allows participants to add names to the Committee's initial slate.⁸ Under this process, no later than 60 days prior to the date announced for the Exchange's annual shareholder meeting, the Committee's initial nominees for participant director positions are reported to the Exchange's Secretary, who then must promptly announce the nominees to the Exchange's participants.⁹ Participants may identify other candidates for one or more of these positions by delivering to the Exchange's Secretary, at least 35 days prior to the date announced for the annual meeting of shareholders, a written petition, signed by at least ten participants, identifying additional candidates.¹⁰ If one or more valid petitions are submitted, the Exchange conducts an election to confirm the participants' selections of nominees for the participant director positions.¹¹

Each participant has one vote with respect to each participant director position that is to be filled. The individuals having the largest number of votes are the final nominees, and the Nominating & Governance Committee must nominate these persons to fill the available positions.¹² This process is designed to provide Exchange participants with fair representation in the selection of Exchange directors.¹³

The Exchange proposes to amend its bylaws to require the Board to set aside one position in each Board class for an STP Participant Director, with the candidates for each of those positions to be subject to the petition process. The Exchange acknowledges that the proposal would reduce the number of participant directors whose elections are subject to this petition process, but maintains that it would still ensure that at least 20% of the Exchange's directors (on a Board of fifteen or fewer people)

now referred to as Exchange "participants." For purposes of the Act, participants are considered to be members of the Exchange. See Rule 1.1 of Article I of the CHX Rules. See also *infra* note 6.

⁶ See Article II, Section 2(c) of the Exchange's bylaws. A "public director" is a director who (i) is not a participant in the Exchange, or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of the Exchange or any of its affiliates, (iii) is not a broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with CHX Holdings or the Exchange (or with any of their affiliates) or with any broker or dealer. See Article II, Section 2(b) of the Exchange's bylaws. A "Participant Director" is a director who is a participant or an officer, managing member, or partner of an entity that is a participant. *Id.* An individual or entity is a participant in the Exchange if that individual or entity holds a trading permit issued by the Exchange. *Id.*

⁷ See Article II, Section 3(b) of the Exchange's bylaws.

⁸ See Article II, Section 3(d) of the Exchange's bylaws.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See Article II, Section 3(b) and (e) of the Exchange's bylaws.

¹³ See 15 U.S.C. 78f(b)(3) (requiring that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 54226 (July 27, 2006), 71 FR 44064 ("Notice").

⁴ Each investment represents a minority equity stake in CHX Holdings consisting of shares of CHX Holdings Series A Preferred Stock.

⁵ See Securities Exchange Act Release No. 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (order approving Exchange's demutualization). As part of the demutualization, former CHX members received common stock in CHX Holdings and received CHX trading permits entitling them to maintain their access to the Exchange. In addition, other persons who satisfy the applicable requirements were granted the ability to obtain trading permits, regardless of whether they are shareholders in CHX Holdings. Persons who hold trading permits are