

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64121; File No. SR-CHX-2011-01]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Change to Rules Regarding Proxy Voting by Participants

March 24, 2011.

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 March 15, 2011, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

CHX proposes to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules that Participants are prohibited from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with provisions of Section 957 of the Dodd-Frank Act, which was signed by the President on July 21, 2010. 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.

#### 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 III 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

CHX proposes to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules that Participants are prohibited from voting uninstructed shares if the matter voted on relates to executive compensation, in accordance with provisions of Section 957 of the Dodd-Frank Act, which was signed by the President on July 21, 2010. Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule changes pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis. We are also proposing to correct an incorrect cross reference in subsection (a) as well as adding the words “or authorize” in certain places throughout the rule to clarify that the rule includes not only the giving of a proxy but also the authorization of such proxy.

##### Current Requirements of CHX Article 8, Rule 14

Under current CHX and Commission proxy rules, brokers must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day preceding the meeting date, Rule 14 provides that a broker may vote on certain matters when the broker has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders, and does not include authorization for a merger, consolidation or any matter which may affect substantially the rights or privileges of such stock. In addition, the Rule currently identifies 20 matters with respect to which brokers may not vote without instructions from beneficial owners.

##### Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Prior to the July 21, 2010 enactment of the Dodd-Frank Act, under Rule 14 and the Exchange’s prior interpretations, Participants were permitted to cast votes on some matters, including some executive compensation proposals, without specific instructions from beneficial owners of the stock.

However, the Dodd-Frank Act contains a provision explicitly requiring the elimination of broker discretionary voting on matters related to executive compensation.

Section 957 of the Dodd-Frank Act amends Section 6(b)<sup>3</sup> of the Exchange Act to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12<sup>4</sup> of the Exchange Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote (i) with respect to the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the “Investment Company Act”)), (ii) executive compensation or (iii) any other significant matter, as determined by the Commission, by rule.

The Exchange prohibits Participants from voting uninstructed shares if the matter voted on is the election of directors (other than in the case of an issuer registered under the Investment Company Act, provided the matter is not the subject of a counter-solicitation). In addition, the Commission has not at this time identified other significant matters with respect to which the Exchange must prohibit member organizations from voting uninstructed shares. Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to amend CHX Article 8, Rule 14 to prohibit Participants from voting uninstructed shares if the matter voted on relates to executive compensation.

Specifically, the Exchange is proposing to add a new Item (u) and accompanying commentary to CHX Article 8, Rule 14 (Proxies) to provide that a Participant may not give or authorize a proxy to vote without instructions from the beneficial owner when the matter to be voted upon relates to executive compensation.

The proposed commentary to Item (u) would clarify that a matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Act), including (i) an advisory vote to approve the compensation of

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

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

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 781.

executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a Participant may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item (l), Item (m) or any other Item under CHX Article 8, Rule 14. The Exchange also proposes to add cross reference commentary to Items (l) and (m) to further clarify this point. Any vote on these or similar executive compensation-related matters would be subject to the requirements of CHX Article 8, Rule 14, as amended.

The Exchange notes that the foregoing change is based upon the change that has been adopted by the New York Stock Exchange and that has been previously approved by the Commission.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(10)<sup>8</sup> requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that an

exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting the proposed rule changes to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule changes to be consistent with Section 6(b)(5) of the Act, particularly with respect to the protection of 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 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 Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. 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-2011-01 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2011-01. 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 Web site viewing and printing 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 CHX. 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-2011-01 and should be submitted on or before April 20, 2011.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis. The Exchange stated that it believed good cause existed to grant accelerated approval because Section 957 of the Dodd-Frank Act does not provide for a transition period.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> The Commission believes that the proposal is consistent with Section 6(b)(10)<sup>11</sup> of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)<sup>12</sup> of the Act, which provides, among other things, that the rules of the Exchange

<sup>5</sup> See Securities Act Release No. 62874 (September 9, 2010), 75 FR 56152 (September 15, 2010) (SR-NYSE-2010-59).

<sup>6</sup> 15 U.S.C. 78a *et seq.*

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

<sup>8</sup> 15 U.S.C. 78f(b)(10).

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

<sup>10</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(10).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

must be designed to 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that “final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.”<sup>13</sup> The proposed rule change will make CHX rules compliant with the new requirements of Section 6(b)(10) by prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares with respect to any matter on executive compensation.<sup>14</sup>

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.<sup>15</sup>

The Commission notes that the CHX’s new rule prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act, as well as any other matter concerning executive compensation, and has been

drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The proposed rule language also specifically states that a broker vote on any executive compensation matter would not be permitted even it would otherwise qualify for an exception from any item under Article 8, Rule 14. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

Finally, the Commission notes that the change to reflect that the CHX rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of the CHX proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that CHX’s proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act by ensuring that brokers, holding shares on behalf of beneficial owners, are not voting uninstructed shares on matters relating to executive compensation, which should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange’s proposal, because it will conform Article 8, Rule 14 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.<sup>17</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-CHX-2011-01) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64122; File No. SR-Phlx-2011-03]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Amendment to Rule 862 Relating to Discretionary Proxy Voting on Executive Compensation Matters

March 24, 2011.

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 March 16, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 and is approving the proposed rule change on an accelerated basis.

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

The Exchange, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend Phlx Rule 862 (Proxies at Direction of Owner) to prohibit member organizations from voting on matters related to executive compensation, or any other significant matter, as determined by the Securities and Exchange Commission (“Commission”) by rule unless instructed by the beneficial owner of the shares.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

<sup>19</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> 15 U.S.C. 78s(b)(1).

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

<sup>13</sup> See S. Rep. No. 111-176, at 136 (2010).

<sup>14</sup> As noted above, Section 6(b)(10) also prohibits broker voting for director elections, except for uncontested director elections of registered investment companies, and also “any other significant matter, as determined by the Commission, by rule.” CHX already prohibits broker voting in director elections except for uncontested director elections for registered investment companies. See CHX Article 8, Rule 14(c)(4)(s) and note 15, *infra*. As to other matters, the Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect CHX to adopt coordinating rules promptly to comply with the statute.

<sup>15</sup> As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See *supra* note 5.

<sup>18</sup> 15 U.S.C. 78s(b)(2).