

Proposed Rule Change by Chicago Board Options Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

This filing modifies CBOE's non-option listing rules regarding broker discretionary voting.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Angelo"/>	Last Name	<input type="text" value="Evangelou"/>
Title	<input type="text" value="Assistant General Counsel"/>		
E-mail	<input type="text" value="evangelou@cboe.com"/>		
Telephone	<input type="text" value="(312) 786-7464"/>	Fax	<input type="text" value="(312) 786-7919"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="03/04/2010"/>
By	<input type="text" value="Angelo Evangelou"/>
	(Name)
	<input type="text" value="Assistant Secretary"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Angelo Evangelou, evangelou@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) The Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) proposes to amend CBOE Rule 31.85 to eliminate broker discretionary voting for all elections of directors at shareholder meetings, whether contested or not, except for companies registered under the Investment Company Act of 1940 (the “1940 Act”), to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company, and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment advisor for which shareholder approval is required by the 1940 Act and the rules thereunder. The Exchange proposes this rule change in response to a request by the Securities and Exchange Commission (the “Commission”) that self-regulatory organizations have uniform proxy rules regarding broker discretionary voting.¹ Set forth below are the proposed changes to the rule text, with additions represented by underscoring and deletions represented by [bracketing].

Chicago Board Options Exchange, Incorporated
Rules

* * * * *

Rule 31.85 Giving Proxies by Member Organization

* * * * *

(b) When a member organization may not vote without customer instructions—A member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

* * * * *

¹ See Commission Release No. 34-60215 (July 1, 2009), note 69.

(19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940: or

(20) materially amends an investment advisory contract with an investment company. A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this rule so that a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

* * * * *

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) CBOE's Office of the Chairman pursuant to delegated authority approved the proposed rule change on October 22, 2009. No further action is required.

(b) Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, General Counsel, CBOE, 400 South LaSalle, Chicago, IL 60605, (312) 786-7462 or Angelo Evangelou, (312) 786-7464.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

A shareholder of a public company may hold shares either directly, as the record holder, or indirectly, as the beneficial holder, with the shares held in the name of the

beneficial shareholder's broker-dealer, bank nominee, or custodian ("securities intermediary"), which is the record holder.² The latter generally is referred to as holding securities in "street name."³ The number of beneficial owners holding securities in street name has increased significantly over the past thirty-three years.

Currently, CBOE Rule 31.85 permits brokers to vote without voting instructions from the beneficial owner on uncontested elections of directors.⁴ Rule 31.85 also lays out a list of enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.⁵ This list does not include the election of directors. Due to the increase in the holding of securities in street name, the impact of the broker vote on the election of directors has become increasingly significant. At the same time, the number of proxy campaigns, such as "just vote no" or "withhold" campaigns, that have targeted the election of directors without a formal contest has also increased. This has made the "uncontested" election of directors a more controversial, as opposed to routine, matter.⁶

In light of this development, the New York Stock Exchange proposed a rule filing to declare the election of directors ineligible for broker discretionary voting.⁷ The Commission approved this filing, as amended, on July 1, 2009.⁸ Correspondingly, CBOE proposes to amend CBOE Rule 31.85 to add all elections of directors at shareholder meetings whether contested or not, except for companies registered under the 1940 Act, to the list of

² See Commission Release No. 34-60215 (July 1, 2009).

³ See *supra* note 2.

⁴ See CBOE Rule 31.85(a), which explains the process and situations in which brokers may vote without voting instructions from the beneficial owner.

⁵ See CBOE Rule 31.85(b).

⁶ See *supra* note 2.

⁷ See SR-NYSE-2006-92.

⁸ See *supra* note 2.

enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.

CBOE also proposes to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment advisor for which shareholder approval is required by the 1940 Act and the rules thereunder. These proposed amendments will help ensure the full and effective voting rights of investment company shareholders on material matters.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")⁹ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹⁰ The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by ensuring better corporate governance and transparency of the election process for directors and by promoting greater uniformity with the proxy rules of

⁹ 15 U.S.C. 78s(b)(1).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

other exchanges.¹² In particular, for Exchange member firms that are also members of other exchanges, confusion might arise as to which exchange's proxy voting rules are applicable to a company listed on the Exchange if there are disparities between proxy voting rules of different exchanges.¹³ The proposed rule change will better enfranchise shareholders and enhance corporate governance and accountability to shareholders.¹⁴

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

Item 6. Extension of Time Period for Commission Action

CBOE does not consent to an extension of the time period for Commission action.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)¹⁵ of the Securities Exchange Act of 1934 and Rule 19b-4(f)(6)¹⁶ thereunder because it effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time

¹² See Securities Exchange Act Release No. 34-61292 (January 5, 2010), 75 FR 1664 (January 12, 2010) (SR-NYSEAmex-2009-93).

¹³ See *supra* note 12.

¹⁴ See *supra* note 2.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

as the Commission may designate if consistent with the protection of investors and the public interest.

This proposal is based on SR-NYSE-2006-92, which was approved by the Commission on July 1, 2009.¹⁷ NYSE Amex has filed a similar rule change with the Commission.¹⁸ The proposed rule change would simply help establish uniformity among exchanges regarding proxy voting rules. Additionally, 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, prior to the date of the filing of the proposed rule change.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 of the Act. The Exchange respectfully requests that the Commission waive the provision providing for “non-controversial” rule changes to become operative in 30 days in order to conform with the Commission’s request¹⁹ and because this filing mirrors rules of NYSE and NYSE Amex, and permit the proposed rule change to take effect and become operative upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

Item 8. Proposed Rule Change Based on Rules or By-Laws of Another Self-Regulatory Organization or of the Commission

¹⁷ See supra note 2.

¹⁸ See supra note 12.

¹⁹ See supra note 2.

This proposal is based on SR-NYSE-2006-92, which was approved by the Commission on July 1, 2009.²⁰

Item 9. Exhibits

Exhibit 1. Form of notice of proposed rule change for publication in the Federal Register.

²⁰ See supra note 2.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-CBOE-2010-027)

Dated: _____

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend CBOE Rule 31.85 regarding Broker Discretionary Voting

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 4, 2010, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend CBOE Rule 31.85 to eliminate broker discretionary voting for all elections of directors at shareholder meetings, whether contested or not, except for companies registered under the Investment Company Act of 1940 (the “1940

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Act”), to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company, and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment advisor. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

A shareholder of a public company may hold shares either directly, as the record holder, or indirectly, as the beneficial holder, with the shares held in the name of the beneficial shareholder’s broker-dealer, bank nominee, or custodian (“securities intermediary”), which is the record holder.⁵ The latter generally is referred to as holding securities in “street name.”⁶ The number of beneficial owners holding securities in street name has increased significantly over the

⁵ See Commission Release No. 34-60215 (July 1, 2009).

⁶ See *supra* note 2.

past thirty-three years.

Currently, CBOE Rule 31.85 permits brokers to vote without voting instructions from the beneficial owner on uncontested elections of directors.⁷ Rule 31.85 also lays out a list of enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.⁸ This list does not include the election of directors. Due to the increase in the holding of securities in street name, the impact of the broker vote on the election of directors has become increasingly significant. At the same time, the number of proxy campaigns, such as “just vote no” or “withhold” campaigns, that have targeted the election of directors without a formal contest has also increased. This has made the “uncontested” election of directors a more controversial, as opposed to routine, matter.⁹

In light of this development, the New York Stock Exchange proposed a rule filing to declare the election of directors ineligible for broker discretionary voting.¹⁰ The Commission approved this filing, as amended, on July 1, 2009.¹¹ Correspondingly, CBOE proposes to amend CBOE Rule 31.85 to add all elections of directors at shareholder meetings whether contested or not, except for companies registered under the 1940 Act, to the list of enumerated items for which a member may not give a proxy to vote without instructions from the beneficial owner.

CBOE also proposes to amend CBOE Rule 31.85 to preclude broker discretionary voting on a matter that materially amends an investment advisory contract with an investment company and to define that a material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company’s investment advisory contract with a new investment advisor for which shareholder approval is required by the 1940 Act and

⁷ See CBOE Rule 31.85(a), which explains the process and situations in which brokers may vote without voting instructions from the beneficial owner.

⁸ See CBOE Rule 31.85(b).

⁹ See *supra* note 2.

¹⁰ See SR-NYSE-2006-92.

¹¹ See *supra* note 2.

the rules thereunder. These proposed amendments will help ensure the full and effective voting rights of investment company shareholders on material matters.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”)¹² and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹³ The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by ensuring better corporate governance and transparency of the election process for directors and by promoting greater uniformity with the proxy rules of other exchanges.¹⁵ In particular, for Exchange member firms that are also members of other exchanges, confusion might arise as to which exchange’s proxy voting rules are applicable to a company listed on the Exchange if there are disparities between proxy voting rules of different exchanges.¹⁶ The proposed rule change will better enfranchise shareholders and enhance corporate governance and accountability to shareholders.¹⁷

B. Self-Regulatory Organization’s Statement on Burden on Competition

¹² 15 U.S.C. 78s(b)(1).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Securities Exchange Act Release No. 34-61292 (January 5, 2010), 75 FR 1664 (January 12, 2010) (SR-NYSEAmex-2009-93).

¹⁶ See supra note 12.

¹⁷ See supra note 2.

CBOE does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)¹⁸ of the Securities Exchange Act of 1934 and Rule 19b-4(f)(6)¹⁹ thereunder because it effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

This proposal is based on SR-NYSE-2006-92, which was approved by the Commission on July 1, 2009.²⁰ NYSE Amex has filed a similar rule change with the Commission.²¹ The proposed rule change would simply help establish uniformity among exchanges regarding proxy voting rules. Additionally, 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, prior to the date of the filing of the

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ See supra note 2.

²¹ See supra note 12.

proposed rule change.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 of the Act. The Exchange respectfully requests that the Commission waive the five day pre-filing requirement and the provision providing for “non-controversial” rule changes to become operative in 30 days, and permit the proposed rule change to take effect and become operative upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

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-CBOE-2010-027 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2010-027. 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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2010-027 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.²²

Dated: _____

Secretary

²² 17 CFR 200.30-3(a)(12).