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Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 13
Amendment No. (req. for Amendments *)

Proposed Rule Change by Chicago Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
☐	☐	☐	☐	☐	☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Change to Establish Listing Standards for Compensation Committees

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 * Albert Last Name * Kim

Title * Corporate Counsel

E-mail * akim@chx.com

Telephone * (312) 663-2484 Fax (312) 663-2231

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 09/25/2012

By James Ongena
(Name *)

General Counsel
(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.

James Ongena, jongena@chx.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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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 (required)

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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

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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

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I 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.

1. Text of Proposed Rule Change

(a) The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange"), pursuant to the provisions of Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] proposes to amend Article 22, Rule 19 (Corporate Governance) to comport with Section 10(C) of the Exchange Act[3] and Rule 10C-1[4] thereunder that directs the Exchange to establish listing standards, among other things, that require each member of a listed issuer's compensation committee to be an independent member of its board of directors and relating to compensation committees and their use of compensation consultants, independent legal counsel and other advisers (collectively, "compensation advisers").

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c). Not applicable.

2. Procedures of the Self-Regulatory Organization

This proposal has not yet been approved by the Exchange's Board of Directors. The Board of Directors will next meet on September 27, 2012, at which time the Board will consider approving this proposed rule change.

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

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. § 78j-3.

[4] 17 CFR 240.10C-1.

(a) Purpose

The Exchange proposes to amend Article 22, Rule 2 (Admittance to Listing), Rule 4 (Removal of Securities) and Rule 19 (Corporate Governance) to comport with Section 10(C) of the Exchange Act[5] and Rule 10C-1[6] thereunder, which directs the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be an independent member of its board of directors and listing standards relating to compensation committees and their use of compensation advisers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act") established Section 10C of the Exchange Act, which directed the Securities and Exchange Commission ("Commission" or "SEC") to require national securities exchanges and associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements.[7] Specifically, section 10C(a)(1) of the Exchange Act required the Commission to adopt rules directing the exchanges to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent."[8] Moreover, section 10C(a)(4) of the Exchange Act required the Commission to permit the exchanges to exempt particular relationships from the independence requirements, as each exchange determines is appropriate, taking into consideration the size of an issuer and any other relevant factors[9] and section 10C(e)(3) required the Commission to permit the exchanges to exempt categories of issuers from the requirements of section 10C, as each exchange determines is appropriate, taking into

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] 15 U.S.C. § 78j-3.

[8] 15 U.S.C. § 78j-3(a).

[9] 15 U.S.C. § 78j-3(a)(4).

consideration of the impact of section 10C on smaller reporting issuers[10]. In addition, Section 10C(f) of the Exchange Act required the Commission to adopt rules directing the exchanges to establish listing standards that provide for requirements relating to compensation committees and compensation consultants, independent legal counsel and other advisers (collectively, "compensation advisers"), as set forth in paragraphs (b)-(e) of Section 10C.[11] Finally, Section 10C(c)(2) required each issuer to disclose in any proxy or consent solicitation material for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting), in accordance with Commission regulations, whether the issuer's compensation committee retained or obtained the advice of a compensation consultant; whether the work of the compensation consultant has raised any conflict of interest; and, if so, the nature of the conflict and how the conflict is being addressed.[12]

On July 27, 2012, the Commission promulgated Exchange Act Rule 10C-1 to implement the compensation committee listing requirements of Sections 10C of the Exchange Act. As such, the Exchange now proposes to amend its rules to comport with the new requirements.

Proposed Amendments to CHX Article 22

The Exchange proposes to amend portions of Article 22, Rule 2 (Admittance to Listing), Rule 4 (Removal of Securities) and Rule 19 (Corporate Governance) to establish listing standards that require each member of a listed issuer's compensation committee to be an "independent" member of its board of directors, to adopt standards relating to compensation committees' authority to retain compensation advisers and to clarify the consequences to issuers for failure to comply with these proposed amendments. It is important to note that virtually all of the proposed amendments are in Rule 19(d), which currently outlines all of the listing standards with respect to issuers' compensation committees.

Proposed Rule 2 and Rule 4(a)

[10] 15 U.S.C. § 78j-3(f)(3)(A).

[11] 15 U.S.C. § 78j-3(b)(2).

[12] 15 U.S.C. § 78j-3(c)(2).

Proposed Rule 2 provides that the Exchange's Board of Governors may list securities once the requirements of Article 22 are met and upon terms, conditions and payment of fees as the Exchange's board of directors may from time to time prescribe. In doing so, proposed Rule 2 adopts much of the current Rule 2, while only clarifying that the Board of Governors may only admit securities "once the requirements of this Article are met." Also, proposed Rule 4(a) provides that securities may be removed from the list, with notice, by either the issuer or the Exchange, for any reason, including an issuer's failure to comply with the listing standards of this Article 22. In doing so, proposed Rule 4(a) adopts much of the current Rule 4(a), while inserting language that states that securities may be delisted by either the issuer or the Exchange and clarifies that securities may be removed for any reason, including an issuer's failure to comply with the requirements of this Article, which includes proposed Rule 19(d). Current Rule 4(b)-(g) establish the procedures under which a security may be delisted, to which the Exchange proposes no amendments.

As such, proposed Rule 2 and Rule 4, considered in conjunction with current Article 22, Rule 1[13], comport with Exchange Act Rule 10C-1(a)(1) that requires the Exchange to "prohibit the *initial and continued* listing of any equity security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section." That is, the purpose of these proposed amendments is to clarify the potential consequences of an issuer's failure to comply with CHX Article 22, which includes the proposed compensation committee listing standards.

Proposed Rule 19(d)(1), 19(d)(2) and 19(p)(3)

Proposed Rule 19(d)(1) states that an issuer's "compensation committee," as defined under proposed Rule 19(d)(2)(A), or its "functional equivalent," as defined under proposed Rule 19(d)(2)(B), shall be comprised solely of "independent directors," as defined under proposed Rule 19(p)(3). In turn, proposed Rule 19(d)(2)(A) states that a "compensation committee" means a committee of the board of

[13] CHX Article 22, Rule 1 states, in pertinent part, that "the requirements, set forth in this Article, must be met in order for the Exchange to entertain an application for listing."

directors that is designated as the compensation committee; or in its absence, a committee of the board of directors performing functions typically performed by a compensation committee, including oversight of the executive compensation, even if it is not designated as the compensation committee or also performs other functions. Also, proposed Rule 19(d)(2)(B) states that in the absence of a committee as described above, the members of the board of directors who oversee executive compensation matters on behalf of the board of directors, who together must comprise a majority of the board's independent directors, in lieu of a formal committee of the board of directors. That is, the Exchange proposes to define "compensation committee" as any formal committee that is given the responsibility of determining executive compensation and "functional equivalent" as group of independent directors that perform such functions outside a formal committee structure. Also, proposed Rule 19(p)(3) defines "independent director" as a person who is a member of the issuer's board of directors, other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship, which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of an independent director. The proposed rule further states that the issuer's board is responsible for making an affirmative determination that no such relationship exists and lists seven specific instances where a director shall not be considered independent[14].

[14] Proposed Rule 19(p)(3)(A)-(G) virtually adopts current Rule 19(p)(3)(A)-(G) and provides that the following persons shall not be considered independent: (A) a director who is, or during the past three years, was employed by the issuer or its parent or subsidiary; (B) a director or an immediately family member of a director who had accepted payments from the issuer or its parent or subsidiary in excess of $120,000 in the current fiscal year or any of the past three fiscal years, with exceptions for payments received for services to the board, payments arising from investments in the issuer's securities, compensation paid to an immediate family member who is an employee, but not an executive officer, of the issuer, benefits under a tax-qualified retirement plan, non-discretionary compensation or loans permitted under Section 13(k) of the Exchange Act; (C) a director who is an immediate family member of an individual who is, or at any time during the past three years was, employed by the issuer or by any parent or subsidiary of the issuer as an executive officer; (D) a director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments for property or services, in the current or any of the past three fiscal years, that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than payments arising solely from investments in the issuer's securities or payments under non-discretionary charitable contribution

In order to implement proposed Rule 19(d)(1) and Rule 19(d)(2), the Exchange proposes to delete current Rule 19(d)(1), which outlines how the compensation of a chief executive officer is to be determined and current Rule 19(d)(2), which outlines how a the compensation of other officers are to be determined, and restate those rules with amendments, as proposed Rule 19(d)(3). Moreover, the only substantive differences between the current and proposed Rule 19(p)(3) are that the proposed rule clarifies that an independent director is a "member of the issuer's board of directors" and that the concern over the independence of such a director is regarding the director's ability to carry out the "specific responsibilities of an independent director." In addition, proposed Rule 19(p)(3)(B) amends the threshold amount for payments to directors for permissible services from $60,000 to $120,000.[15]

As such, proposed Rule 19(d)(1) and Rule 19(p)(3) comport with the requirements of Exchange Act Rule 10C-1(b)(1)(i) and (ii). Initially, as mandated by Exchange Act Rule 10C-1(b)(1)(i), which states, "each member of a compensation committee must be a member of the board of directors of the listed issuer, and must otherwise be independent," proposed Rule 19(d)(1) requires members of an issuer's compensation committee or functional equivalent be "independent directors" and, in turn, proposed Rule 19(p)(3) defines a "director," in relevant part, as a "person who is member of the issuer's board of directors." Moreover, proposed Rule 19(d)(2) incorporates the definition of a "compensation committee" as defined under Exchange Act Rule 10C-1(c)(2), while organizing that definition in a manner that would make clear the Exchange's distinction between (1) formal committees of the board of

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matching programs; (E) a director of the issuer who is, or has an immediate family member who is, employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer serve on the compensation committee of such other entity. (F) A director who is, or has an immediate family member who is, a current partner of the issuer's outside auditor, or who has a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during the past three years; (G) In the case of an investment company, in lieu of paragraphs (A –(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

[15] *Id.*

directors, *i.e.* a compensation committee or a committee assigned functions typical of a compensation committee and (2) functional equivalent non-committees, which are simply comprised of a majority of an issuer's independent directors. As discussed in the Commission's release, this distinction is essential to clearly enunciate which proposed rules apply to both formal committees of the board and functional equivalents and which proposed apply only to formal committees.[16]

Moreover, proposed Rule 19(p)(3)(A)-(G) contemplates the required factors stated in Exchange Act Rule 10C-1(b)(1)(ii), where the Exchange's definition of "independent director" takes into consideration the director's source of compensation and affiliations. Specifically, Exchange Act Rule 10C-1(b)(1)(ii)(A) requires the Exchange to consider "the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory or other compensatory fee paid by the issuer to such a member of the board of directors," whereas Exchange Act Rule 10C-1(b)(1)(ii)(B) requires the Exchange to consider "whether a member of the board of directors of an issuer is affiliated with the issuer[17], a subsidiary of the issuer or an affiliate of a subsidiary of the issuer." The Exchange submits that each one of the subparagraphs (A)-(G), in its current form, adequately address these considerations.

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[16] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 11-13.

[17] The Exchange understands "affiliated with the issuer" to have the same meaning as "affiliated with a specified person," as it is defined under Exchange Act Rule 10A-3(e)(1)(a)(i) [17 CFR 240.10A-3(e)(1)(i)], which states, in pertinent part, "… a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." The term "control" is explained under paragraph (e)(1)(a)(ii)(A) [17 CFR 240.10A-3(e)(1)(ii)(A)], "a person will be deemed not to be in control of a specified person for purposes of this section if the person: (1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and (2) is not an executive officer of the specified person." Moreover, paragraph (e)(1)(iii) [17 CFR 240.10A-3(e)(1)(iii)], list the following to be deemed affiliates: "(A) An executive officer of an affiliate; (B) a director who also is an employee of an affiliate; (C) A general partner of an affiliate; and (D) A managing member of an affiliate."

Current Rule 19(p)(3)(A) precludes from being considered independent a director who currently is or was, during the past three years, employed by the issuer or parent or subsidiary of the issuer. This preclusion is based, in part, on Exchange Act Rule 16b-3(b)(3)(i) [18], which excludes from the definition of a "non-employee director" a director who is an officer of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer. The Exchange submits that a director who is or was an executive officer or employee of the issuer could never independent due to the nature of professional relationships that are formed in an employment setting and the consequences that flow therefrom. For example, a director who is employed by the issuer may have her employee compensation (i.e. salary, bonuses, etc …) affected by her actions as a member of the compensation committee. Moreover, a director who recently ended her employment with the issuer may still maintain personal relationships with executive officers that may compromise independent judgment. Consequently, the look-back provision is necessary, because the nature of such personal relationships may remain unchanged for sometime after the director ceased being employed by the issuer.

Proposed Rule 19(p)(3)(B) precludes a director from being independent, where the director or an immediate family member of the director accepted payments from the issuer or parent or subsidiary of the issuer in excess of $120,000 in the current fiscal year or any of the past three fiscal years, excluding (1) compensation for board or board committee service; (2) payments arising solely from investments in the issuer's securities; (3) compensation paid to an immediate family member who is a non-executive employee of the issuer or a parent or subsidiary of the issuer; (4) benefits under a tax-qualified retirement plan; (5) non-discretionary compensation; or (6) loans permitted under Section 13(k) of the Act. The only proposed amendment to current Rule 19(p)(3)(B) is to increase the cap amount from $60,000 to $120,000,

[18] 17 CFR 240.16b-3(b)(3)(i).

so as to remain in lockstep with other exchanges, such as BATS[19] and disclosure guidelines under Item 404(a) of Regulation S-K[20], both of which set threshold amounts at $120,000.

Similar to subparagraph (A),proposed subparagraph (B) is also based in part on Exchange Act Rule 16b-3(b)(3)(i), which excludes from the definition of "non-employee director," a director who receives compensation, either directly or indirectly, from the issuer or a parent or subsidiary of the issuer for services rendered as a consultant or in any capacity other than as a director, except for an amount that does not exceed $120,000, pursuant to Item 404(a) of Regulation S-K[21]. The Exchange acknowledges that a director who meets the definition of a "non-employee director" is not necessarily "independent." However, the Exchange submits that a cap of $120,000 on affected payments are adequately high to allow a director or immediate family member to receive payments for permissible services to the issuer, while sufficiently low as to reasonably ensure that the director is able to exercise independent judgment. Moreover, a cap on such payments is preferable to an absolute rule that precludes director independence for any payments made. This is because the category of services contemplated by this subparagraph (B), such as consulting services, are inherently independent from the ordinary business function of the issuer, in contrast to payments received in the context of employment. As such, receiving payments for such independent services do not adversely impact the ability of the director to be independent. The Exchange submits that in determining director independence, this subparagraph strikes a good balance between

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[19] BATS Rule 14.10(c)(1)(B) states, in pertinent part, that an "'independent director' means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director" and paragraph (c)(1)(B)(ii) precludes from being considered independent "a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence."

[20] 17 CFR 229.404.

[21] Item 404(a) of Regulation S-K [17 CFR 229.404] mandates disclosure requirements for transactions exceeding $120,000 in which the registrant was a participant and in which any "related person" has a direct or indirect material interest. In the context of Item 404(a), a "related person" includes any director of the registrant.

allowing directors to continue to provide valuable independent services and setting the threshold at which the amount of payments received would likely begin to impact independent judgment. Given these considerations, the Exchange submits that payments that arise from independent permissible services should not *per se* disqualify a director from being considered independent.

In recognizing the intimate nature of relationship between a director and an immediate family member[22], the Exchange submits that immediate family members of a director that fall under the purview of paragraph (B) should also preclude such a director from being considered independent. For the same reason, the Exchange has also included a director's relationship to such immediate family members within the purview of paragraphs (C)-(F). With respect to the six categories of payments that excluded from the cap requirement of this subparagraph (B), the Exchange submits that such exceptions are appropriate because those payments are nondiscretionary and/or predetermined payments. As such, these payments are immaterial to a director's ability to be independent, where it is unlikely that these payments could be unilaterally altered by any executive officer, at least without the knowledge of the board of directors.

Current Rule 19(p)(3)(C) precludes a director who is an immediate family member of an individual who currently is or was, during the past three years, employed as an executive officer of the issuer or parent or subsidiary of the issuer. Given the intimate nature of the relationship between immediate family members, the Exchange submits that where a director's immediate family member is an executive officer of the issuer, the director is *per se* not independent. This is because the nature of the personal relationship between the director and immediate family member who is an executive officer will likely compromise independent judgment, especially in the context of determining the compensation of the immediate family member. It is important to note that although this paragraph does not include

[22] Pursuant to CHX Rule 19(p)(2), an "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any person who has the same residence.

immediate family members who are non-executive employees of the issuer, Rule 19(p)(3) still allows for a board of directors to nonetheless find that such a relationship would preclude a director from being independent. However, the Exchange submits that establishing an absolute rule would be inappropriate and that an issuer's boards of directors is better equipped to assess such relationships on a case by case basis.

Current Rule 19(p)(3)(D) precludes from being independent a director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made or from which received payments for property or services, in the current or any of the past three fiscal years, that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, excluding payments arising (1) solely from investments in the issuer's securities or (2) payment under non-discretionary charitable contribution matching programs. The purpose of this proposed rule is to scrutinize directors who benefit from their business activities with the issuer when determining their ability to exercise independent judgment.

Similar to subparagraph (B), the Exchange submits that placing a cap on value of property or services received or given is preferable to a rule that precludes director independence for any such activity. This is because the nature of corporate governance is as such that directors are frequently affiliated with multiple corporate entities in the same or similar fields and inevitably, these various entities deal with each other in the ordinary course of their respective businesses. Thus, the Exchange submits that so long as such activities do not exceed 5% of the payment recipient's consolidated gross revenues for that year or $200,000, whichever is more, the activity is ordinary enough so as to not adversely impact the director's ability to be independent. In addition, the exclusions to this paragraph are necessary so as to exclude categories of payments that are non-discretionary and pre-determined, therefore immaterial to a director's ability to be independent.

Current Rule 19(p)(3)(E) precludes from being independent a director who is or has an immediate family who is employed as an executive officer of another entity where, at any time during the past three

years, any of the executive officers of the issuer served on the compensation committee of the other entity. The Exchange submits that a director cannot be independent where the director is charged with determining the compensation of an executive, who in turn, is charged with determining the director's compensation in her capacity as an executive officer of the other entity. This scenario is obviously improper, as it may open the door to, among other things, undue influence and breaches of fiduciary duty. Certainly, a director subjected to such factors would not be able to exercise independent judgment. Also, given the personal nature of a family relationship, directors who have immediate family member who are employed as an executive officer by the aforementioned other entity should also be disqualified from being considered independent.

Current Rule 19(p)(3)(F) precludes from being independent a director (1) who is or has an immediate family member who is a current partner of the issuer's outside auditor or (2) who has a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during the past three years. The primary purpose of this subparagraph is to prevent a director, who has or had a direct association with the issuer's outside auditor, from being placed on the issuer's audit committee. This is because such a director would be privy to information that only the outside auditor would know and could, in turn, use that information to the advantage of an issuer, defeating the original purpose of an outside auditor. Therefore, merely having access to this knowledge would render such a director unable to exercise independent judgment.

Finally, current Rule 19(p)(3)(G) applies to investment companies in lieu of paragraphs (A)-(F) and precludes from being independent a director who is an "interested person," as that term is defined under section 2(a)(19) of the Investment Company Act of 1940 ("Investment Company Act")[23]. The Exchange proposes to maintain the exemption of open-ended and closed-ended investment companies, as

[23] 15 USCS § 80a-2(a)(19).

those terms are defined under section 4 and 5(a) of the Investment Company Act[24], from the compensation committee requirements of this proposed Rule 19(d). The exemptions are discussed in detail below through proposed Rule 19(d)(5)(B)(iv).

In sum, proposed Rule 19(d)(1) and Rule 19(p)(3) clearly comport with the requirements of Exchange Act Rule 10C-1(b)(1)(i) and (ii). As mandated by Exchange Act Rule 10C-1(b)(1)(i), proposed Rule 19(d)(1) and Rule 19(p)(3) require members of an issuer's compensation committee or functional equivalent to be independent members of an issuer's board of directors. Also, proposed Rule 19(d)(2) defines the terms "compensation committee" and "functional equivalent" nearly identical, but for a slight difference in organization, to the Commission's definition of "compensation committee," under Exchange Act Rule 10C-1(c)(2). Also, as mandated by Exchange Act Rule 10C-1(b)(1)(ii), current Rules 19(p)(3)(A) – (F) clearly contemplates the source of a director's compensation and affiliations with the issuer in defining an "independent director." Specifically, in contemplating a director's affiliation with issuer, subparagraph (A) precludes from being independent a director who is, or during the past three years was, employed by the issuer or parent or subsidiary of the issuer and subparagraph (C) preclude from being independent a director whose immediate family member is, or during the past three years was, employed by the issuer or parent or subsidiary of the issuer as an executive officer. Also, in contemplating a director's source of compensation, subparagraph (B) precludes from being considered independent a director who receives payments for permissible services beyond a specified threshold, subparagraph (D) precludes from being independent a director who is, or has an immediate family member who is affiliated with any organization to which the issuer made or from which received payments for property or services, in the current or any of the past three fiscal years, beyond a specified

[24] Pursuant to Section 4 and 5(a)(1) of the Investment Company Act [15 USCS § 80a-4 and 80a-5(a)(1)], an "open-end company" means a management company, other than a unit investment trust or face-amount certificate company, which is offering for sale or has outstanding any redeemable security of which it is the issuer. Pursuant to section 5(a)(2) [15 USCS § 80a-5(a)], a "closed-end company" means any management company other than an open-end company.

threshold and subparagraph (E) precludes a director who is, or has an immediate family member who is, employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer served on the compensation committee of such other entity. Finally, subparagraph (F) precludes from being independent a director who is or who has a partner who is or was affiliated with the issuer's outside auditor. Thus, the Exchange submits that Proposed Rule 19(d)(1), Rule 19(d)(2) and Rule 19(p)(3) accurately and reasonably reflect the requirements of Exchange Act Rule 10C-1.

Proposed Rule 19(d)(3)

Proposed Rule 19(d)(3) is a consolidated restatement of current Rule 19(d)(1) and 19(d)(2). In doing so, current Rule 19(d)(3)(A) has been deleted and restated as proposed Rule 19(d)(5)(A)(i), with some syntax amendments to improve logical flow and organization and current Rule 19(d)(3)(B) has been deleted and restated under proposed Rule 19(d)(5)(B)(i). Specifically, proposed Rule 19(d)(3) states that the function of a compensation committee or functional equivalent is to determine or recommend to the issuer's board of directors for determination the compensation of issuer's chief executive officer and other officers. It continues that the chief executive officer shall not be present during the deliberations regarding her own compensation, but that the chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote. Aside from syntax, the only difference between this proposed rule and current Rule 19(d)(1) and Rule 19(d)(2) is that the proposed rule omits the portions of the current rules that mention that compensation of executive officers shall be determined or recommended to the board by "either by (A) a majority of the issuer's independent directors or (B) a compensation committee comprised solely of independent directors."[25] The reason for this omission is

[25] Currently, CHX Article 22, Rule 19(d)(1) states "compensation of the issuer's chief executive officer shall be determined, or recommended to the board for determination, either by (A) a majority of the independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may not be present during voting or deliberations" and Rule 19(d)(2) states "compensation of the issuer's other officers, as that term is defined in Section 16 of the Act, shall be determined, or recommended to the board for determination, either by (A) a majority of the issuer's

that "compensation committee" and "majority of the issuer's independent directors" are already respectively defined under proposed Rule 19(d)(2) as "compensation committee" and its "functional equivalent." The Exchange submits that this organizational amendment is necessary for the logical flow of the proposed Rule 19(d).

Proposed Rule 19(d)(4)

Proposed Rule 19(d)(4)(A)-(E) outlines listing standards mandated under Exchange Act Rule 10C-1(b)(2), concerning the authority of compensation committees to retain compensation consultants, outside legal counsel and other advisers (collectively "compensation advisers").

Specifically, pursuant to Exchange Act Rule 10C-1(b)(2)(i), proposed subparagraph (A) provides that an issuer that maintains a "compensation committee," as defined under proposed Rule 19(d)(2)(A), shall give such a compensation committee sole discretion to retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser. Also, pursuant to Exchange Act Rule 10C-1(c)(2)(iii), proposed subparagraph (A) continues by stating that it does not apply to issuer's that maintain a "functional equivalent," as defined under proposed Rule 19(d)(2)(B), to a compensation committee.[26] The reasoning behind this exclusion is that since an action by independent directors acting outside of a formal committee structure would generally be considered action by the full board of directors, it is unnecessary to apply this requirement to directors acting outside of a formal committee structure, as they retain all the powers of the board of directors in making executive compensation determinations.[27]

Also, pursuant to Exchange Act Rule 10C-1(b)(2)(ii), proposed subparagraph (B) provides that the compensation committee or functional equivalent shall be directly responsible for the appointment,

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independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote."

[26] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 12.

[27] *Id.*

compensation and oversight of the work of any compensation consultant, independent legal counsel and other adviser retained by the compensation committee. It is important to note that unlike proposed subparagraph (A) proposed subparagraph (B) explicitly applies to both "compensation committees" and its "functional equivalent." In addition, pursuant to Exchange Act Rule 1C-1(b)(2)(iii), proposed subparagraph (C) states that nothing in this proposed Rule 19(d)(3) shall be construed to require the compensation committee or functional equivalent to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser nor to affect the ability or obligation of a compensation committee or functional equivalent to exercise its own judgment in fulfillment of its duties. Moreover, pursuant to Exchange Act Rule 10C-1(b)(3), proposed subparagraph (D) states that an issuer that maintains a compensation committee shall provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the compensation committee. Similar to proposed subparagraph (A), proposed subparagraph (D) continues by stating that it shall not apply to issuer's that maintain a functional equivalent to a compensation committee, pursuant to Exchange Act Rule 10C-1(c)(2)(iii).[28]

Finally, pursuant to Exchange Act Rule 10C-1(b)(4), proposed subparagraph (E) states that the compensation committee or functional equivalent may select a compensation consultant, legal counsel or other adviser, other than in-house legal counsel, only after taking into consideration the following six factors:(i) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser; (ii) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser; (iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the

[28] *Supra* note 26.

compensation consultant, legal counsel or other adviser with a member of the compensation committee; (v) any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and (vi) any business or personal relationship of the compensation consultant, legal counsel, or other adviser or the person employing the adviser with an executive officer of the issuer. The Exchange agrees with the Commission that these six factors, when considered together, are competitively neutral, as they will require compensation committees and functional equivalents to consider a variety of factors that may bear upon the likelihood that a compensation adviser can provide independent advice to the compensation committee, but will not prohibit committees from choosing any particular adviser or type of adviser.[29] Therefore, the Exchange proposed to add no further requirements or factors to be considered this subparagraph (E).

Proposed Rule 19(d)(5) and Paragraph .03(3) of the Interpretations and Policies

Proposed Rule 19(d)(5) outlines exceptions to the listing standards of this proposed Rule 19(d), pursuant to Exchange Act Rule 10C-1(b)(1)(iii), which requires the Exchange to exempt specified categories of issuers and gives the Exchange discretion to exempt certain director relationships from the requirements of Rule 10C-1(b)(1) and Rule 10C-1(b)(1)(5), which gives the Exchange discretion to exempt from the requirements of Exchange Act Rule 10C-1 any category of issuer, after considering relevant factors. In establish these exemptions, proposed Rule 19(d)(5) distinguishes between (A) *temporary exemptions*, (B) *general exemptions* and (3) *limited exemptions*.

Proposed Rule 19(d)(5) lists the *temporary exemptions* from proposed Rule 19(d). Proposed Rule 19(d)(5)(A)(i) is a restatement of current Rule 19(d)(3), which allows an issuer, under exceptional and limited circumstances, to temporarily appoint a non independent director to its compensation or functional equivalent one director who is not independent, for a term that shall not exceed two years from the date of appointment (unless the director becomes independent prior to the end of the two year period), if (1) the

[29] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 40.

compensation committee or functional equivalent is comprised of at least three persons, including the proposed non-independent director; (2) the non-independent director is not a current officer or employee nor is an immediately family member of a current officer or employee; and (3) the issuer's board of directors determines that (a) the membership of the non-independent director on the compensation committee or functional equivalent is required by the best interests of the company and its shareholders and (b) the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination.

The purpose of this exemption is to allow issuers to efficiently deal with unforeseen and exceptional circumstances, so as to ensure the smooth function of its compensation committee or functional equivalent. While doing so, the exemption clearly establishes guidelines to minimize the risk of abuse by requiring that the non-independent director's appoint be temporary, that such a director will not be an employee of the issuer and that such a director's appointment is made clear to the shareholders via a proxy statement or Form10-K or 20F, thereby eliminating the risk of undue influence from superiors or subordinates. Furthermore, the Exchange submits that it would not be in the public interest to burden issuers confronted with unforeseen and exceptional circumstances, especially where inaction by a compensation committee may result in a loss of executive talent to the detriment of shareholders. It is important to note that the same temporary exemption, with some differences for context, can be found in CHX Article 22, Rule 19(b)(1)(C)(i)[30] and given the similarities between that rule for audit committees

[30] CHX Article 22, Rule 19(b) governs listing standards for "audit committees and Rule 19(b)(1)(C)(i) states "one director who is not independent as required by section (b)(1)(A)(i) above, but who meets the criteria set forth in SEC Rule 10A-3 and who is not a current officer or employee (or an immediate family member of a current officer or employee) may be appointed to the audit committee, if the issuer's board under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or other applicable annual disclosure filed with the SEC), the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve on the audit committee for more than two years under this exception (unless he

and this proposed rule for compensation committees, the Exchange submits that this exemption is wholly appropriate and necessary.

In addition, proposed Rule 19(d)(5)(A)(ii) outlines an opportunity to cure defects, almost precisely as stated in Exchange Act Rule 10C-1(a)(3) and current CHX Article 22, Rule 19(b)(1)(C)(ii)[31] . Specifically, it states that if a member of an issuer's compensation committee or functional equivalent ceases to be an independent director for reasons outside the member's reasonable control, that member, with prompt notice by the issuer to the Exchange, may remain a member of the compensation committee or functional equivalent until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the member to be no longer an independent director.

Proposed Rule 19(d)(5)(B)(i)-(viii) list the *general exemptions* from proposed Rule 19(d). All of the exemptions listed under this subparagraph are (1) specific exemptions required under Exchange Act Rule 10C-1(b)(5); (2) proposed expansions of specific exemptions listed under Exchange Act Rule 10C-1(b)(1)(iii); or (3) exemptions already in effect under CHX Rules and proposed pursuant to Exchange Act Rule 10C-1(b)(5)(i). Some of the proposed exemptions fall under one or more of these categories and each exemption will discussed in this context.

Proposed subparagraph (i) exempts controlled companies from the requirements of proposed Rule 19(d), as mandated by Exchange Act Rule 10C-1(b)(5)(ii), with certain additional requirements[32]. Such

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or she ultimately satisfies the definition of an independent director) and may not chair the audit committee."

[31] CHX Article 22, Rule 19(b) governs listing standards for "audit committees and Rule 19(b)(1)(C)(ii) and Rule 19(b)(1)(C)(ii) states "if a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A-3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs."

[32] Pursuant to CHX paragraph .02 of the Interpretations and Policies of Rule 19, controlled companies that rely on this exemption are required to disclose in its annual proxy (or Form 10-K, 20-F, or other applicable annual disclosure filed with the SEC) that it is a controlled company and the basis for that determination.

issuers are already exempt from the current compensation committee requirements under current Rule 19(d)(3)(B). Under Rule 19(p)(1), "controlled company" is defined as a company of which more than 50 percent of the voting power is held by an individual, group or another company. This definition is consistent with Exchange Act Rule 10C-1(c)(3), which defines a "controlled company" as an issuer that is listed on a national securities exchange or by national securities association and of which more than 50 percent of the voting power for the election of directors is held by an individual, a group or another company. For reasons specific to the organizational structure of CHX Rules, the Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19, as proposed paragraph .03(6).

Proposed subparagraph (ii) exempts companies in bankruptcies from the requirements of proposed Rule 19(d). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(1) of the Interpretations and Policies of Rule 19[33]. Although Exchange Act Rule 10C-1(b)(1)(A)(iii)(2) already mandates that such companies be exempt from the independence requirements, subparagraph (ii) proposes to expand that exemption to all requirements under Exchange Act Rule 10C-1, pursuant to the Exchange's authority granted under Exchange Act Rule 10C-1(b)(5)(i). The purpose behind this exemption is to not overburden issuers that are struggling to emerge from bankruptcy. That is, it would not be in public interest to burden such companies with additional listing standards where such companies are subject to a host of bankruptcy requirements that will fundamentally impact its survival. Given these considerations, the Exchange submits that it would be wholly appropriate to exempt companies in bankruptcy from all of the requirements of proposed Rule 19(d).

Proposed subparagraph (iii) exempts limited partnerships from the requirements of proposed Rule 19(d), as already codified in CHX rules as paragraph .03(1) of the Interpretations and Policies of Rule

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[33] Paragraph .03(1) of the Interpretations and Policies of Rule 19 states that "limited partnerships and companies in bankruptcies are not required to comply with sections (a), (c) and (d) above."

19[34] . "Limited partnership" is defined as a form of business ownership and association consisting of one or more general partners who are fully liable for the debts and obligations of the partnership and one or more limited partners whose liability is limited to the amount invested[35]. Although Exchange Act Rule 10C-1(b)(1)(A)(iii)(1) already mandates that such companies be exempt from the independence requirements, subparagraph (iii) proposes to expand that exemption to all requirements under Exchange Act Rule 10C-1, pursuant to the Exchange's authority granted under Exchange Act Rule 10C-1(b)(5)(i). This exemption is due to the fact that the very ownership/management structure of limited partnerships that renders the independent director requirements inapplicable, as contemplated by Exchange Act Rule 10C-1(b)(1)(iii)(A)(1), would in turn, render the compensation consultant requirements unnecessary as well. By logical extension, the Exchange submits that it would be wholly appropriate to exempt limited partnerships from all of the requirements of proposed Rule 19(d).

Proposed subparagraph (iv) exempts from the requirements of proposed Rule 19(d) "closed-end and open-end management companies" registered under the Investment Company Act[36], as already codified in CHX rules as paragraph .03(2) of the Interpretations and Policies of Rule 19[37]. Although

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[34] *Id*.

[35] *See* Unif. Ltd. P'ship Act §§ 102, 303 and 404 (2001).

[36] *Supra* note 24.

[37] Paragraph .03(2) of the Interpretations of Policies of Rule 19 entitled, "Closed-End and Open-End Management Companies" states, "(A) Closed-end management companies that are registered under the Investment Company Act of 1940 are not required to comply with sections (a) through (f) of this Rule; except that closed-end funds must (i) maintain an audit committee of at least three persons; and (ii) comply with the provisions of SEC Rule 10A-3 and the provisions of paragraphs (b)(1)(A)(iv), (b)(1)(B), (b)(2), (b)(3) and (f), above, subject to applicable exceptions. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. (B) Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of this Rule. (C) Open-end funds (including open-end funds that can be listed or traded as investment company units) are not required to comply with the provisions of sections (a) through (f) of this Rule; except that these funds

Exchange Act Rule 10C-1(b)(1)(iii)(A)(3) only exempts open-end management investment companies from the independence requirement of the Rule 10C-1(b), the Exchange proposes to expand that exemption, pursuant to Rule 10C-1(b)(1)(iii)(A)(1), to include both open-end and closed-end management investment companies and to apply the exemption to all the requirements of Rule 10C-1. The Exchange submits that since registered investment companies are already subject to the requirements of the Investment Company Act, including, in particular, requirements concerning potential conflicts of interest related to investment adviser compensation[38], requiring such companies to comport with the requirements of this proposed Rule 19(d) would be duplicative and unnecessary.

Proposed subparagraph (v) exempts from the requirements of proposed Rule 19(d) any "foreign private issuer" that discloses in its annual report the reasons that it does not have an independent compensation committee, subject to the additional requirements of paragraph .03(4) of the Interpretations and Policies of Rule 19[39]. Moreover, subparagraph (v) adopts the definition of "foreign private issuer" as stated under Exchange Act Rule 3b-4[40]. Pursuant to Exchange Act Rule 10C-1(b)(4)(ii), the Exchange

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must comply with the provisions of sections (b) and (f)(2), above, to the extent required by SEC Rule 10A-3. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company and must address this responsibility in the audit committee charter."

[38] 15 USCS § 80a-2, 15 USCS § 80a-3, 15 USCS § 80a-15, 15 USCS § 80a-17, 15 USCS § 80a-35.

[39] Paragraph .03(4) of the Interpretations of Policies of Rule 19 states, "foreign issuers will be permitted to comply with their home country practices with respect to corporate governance (and thus are exempt from the requirements of sections (a)- (f), above), except to the extent that SEC Rule 10A-3 requires compliance with specific audit committee requirements in sections (b) and (f)(2) above. Foreign issuers must provide English language disclosure of any significant ways in which their corporate governance practices differ from those required for domestic issuers under this Rule 19. This disclosure may be provided either on the issuer's website or in the annual report distributed to shareholders in the U.S. If the disclosure is made only on an issuer's website, the issuer must note that fact in its annual report and provide the web address at which the disclosure may be reviewed."

[40] Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)] defines "foreign private issuer" as "any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers and

proposes to expand the Exchange Act Rule 10C-1(b)(1)(iii)(A)(4) exemption of foreign private issuers from only the independence requirements to all requirements under Rule 10C-1. This is because foreign private issuers are already subject to corporate regulations of their respective home countries and requiring such issuers to comport with Exchange Act Rule 10C-1 would be cumulative, if not contradictory. Moreover, the Exchange submits that requiring a foreign private issuer to disclose in its annual report the reasons why it does not have an independent compensation committee in order for the exemption to apply is sufficient.

Proposed subparagraph (vi) exempts from the requirements of proposed Rule 19(d) clearing agencies that are registered pursuant to Section 17A of the Exchange Act or that are exempt from the registration requirements of section 17A(b)(7)(A) of the Exchange Act that clear and list a security futures product or standardized option, pursuant to Exchange Act Rule 10C-1(b)(5)(iii) and (b)(5)(iv). The Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19 (General Exemptions from Governance Rules), as proposed paragraph .03(7). The reasoning behind this exemption is that such securities are not equity securities and therefore are outside the scope of Exchange Act Rule 10C-1(a)(1).

Proposed subparagraph (vii) exempts from the requirements of proposed Rule 19(d) passive business organizations, such as royalty trusts, or derivatives and special purpose entities, pursuant to the Exchange's discretion to exempt certain categories of issuers under Exchange Act Rule 10C-1(b)(5)(iii). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(3) of the Interpretations and Policies of Rule 19. The reasoning behind exempting passive business organizations, such as royalty trusts, is that such entities are structured fundamentally different from the conventional equities issuers that this Exchange Act Rule 10C-1 aims to guide. For instance, in the case of royalty trusts, such entities do not have employees and virtually all profits earned are distributed to

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directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States."

shareholders. As such, these entities have no need for compensation committees. Moreover, special purpose entities are frequently utilized to securitize receivables, such as loans. Similar to the reasoning behind exempting clearing agencies[41] that issue futures products and standardized options, purchasers of securities issued by such special purpose entities do not make an investment decision based on the issuer, but rather, the underlying security. As a result, information about the special purpose entities, its officers and directors and its financial statements is much less relevant to investors in these securities than information about the underlying security.

Proposed subparagraph (viii) exempts from the requirements of proposed Rule 19(d) issuers listing only preferred or debt securities on the Exchange that are subject to the multiple listing exception described in paragraph .04 of the Interpretations and Policies of Rule 19, pursuant to the Exchange's discretion to exempt certain categories of issuers under Exchange Act Rule 10C-1(b)(5)(iii). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(5) of the Interpretations and Policies of Rule 19. The reasoning behind this exemption is that issuers of preferred or debt securities are already subject to the requirements of the rules of the exchange on which they are primarily listed. As such, this proposed exemption prevents such issuers from having to comport with multiple sets of rules. Moreover, the additional purpose behind exempting debt securities is that such securities are not equity securities, as they do not impart an ownership interest to the holder of such securities. Given these considerations, such securities fall outside the scope of Exchange Act Rule 10C-1(a)(1).

Moreover, proposed Rule 19(d)(5)(C) establishes *limited exemptions* to proposed Rule 19(d). Specifically, proposed subparagraph (i) exempts small business issuers[42] from only the compensation

[41] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 51.

[42] Under Rule 19(p)(5), "small business issuers" is the equivalent to "smaller reporting issuer," as defined under Exchange Act Rule 12b-2.

advisers requirement of proposed Rule 19d(d)(4), as opposed to all of the requirements of Exchange Act Rule 10C-1 per Exchange Act Rule 10C-1(b)(5)(ii). The Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19 (General Exemptions from Governance Rules), as proposed paragraph .03(8). The reasoning behind requiring small business issuers to comport with the independent director requirements is that under current CHX rules, small business issuers are already subject to such requirements. In light of the Commission's concerns about the burden that the additional requirements of Exchange Act Rule 10C-1 would have on smaller reporting issuers[43], the Exchange proposes to exempt such issuers from only the compensation advisers requirements in proposed Rule 19(d)(4). The Exchange submits that maintaining the requirement that small business issuers determine the compensation of an executive officer pursuant to proposed Rule 19(d)(1)-(3) will not impose an additional burden on such issuers as they are already required to follow current Rule 19(d)(1) and 19(d)(2).

Proposed Paragraph .03(5) of the Interpretations and Policies

Pursuant to Exchange Act Rule 10C-1(a)(4), the Exchange proposes to amend paragraph .05 of the Interpretations and Policies of Rule 19 entitled, "Transition Periods and Compliance Dates," to establish a timetable for issuers to conform to the requirements of proposed Rule 19. Specifically, proposed paragraph .05(6) states that the compensation committee requirements mandated by SEC Rule 10C-1, as amended section (b) and paragraph .03 of the Interpretations and Policies of this Rule 19, will become effective as follows: (A) foreign private issuers shall comply with these requirements July 1. 2014; (B) all other issuers shall comply with the requirements by the earlier of: (i) The issuer's first annual shareholders meeting after July 19, 2013; or (ii) January 31, 2014. This proposed compliance time frame for issuers supposes that the effective date for the proposed rules will be July 27, 2013, which is the last possible date permissible by Exchange Act Rule 10C-1(a)(4)(ii).

[43] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 62.

The Exchange submits that this two-tiered time frame will allow all categories of affected issuers to conform to the amendment requirements as soon as practicable. Specifically, the Exchange proposes that a longer timeframe is necessary for foreign issuers so that they would have sufficient time to disclose in their annual report the items necessary to be exempt from proposed Rule 19(d). As for all other domestic issuers, given that the proposed requirements are not so different from the current compensation committee requirements of CHX rules, the Exchange submits that it is reasonable for such issuers to be subject to a shorter compliance timeframe. As such, the Exchange proposes to require domestic issuers to comport with the proposed requirements by the earlier of the issuers' first annual shareholders meeting after the effective date of the proposed rule or January 31, 2014.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[44] in general, and furthers the objectives of Section 6(b)(5)[45] in particular, 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. Specifically, the Exchange believes that the proposed rule change supports the objective of the Exchange Act by providing harmonization between CHX Rules and rules of all other organization subject to the requirements of Exchange Act Rule 10C-1, which would result in less burdensome and more efficient regulatory compliance.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

[44] 15 U.S.C. § 78f(b).

[45] 15 U.S.C. § 78f(b)(5).

The Exchange has neither solicited nor received written comments on the proposed rule changes.

6. Extension of Time Period for Commission Action

The Exchange consents to an extension of the time period specified in Section 19(b)(2)[46].

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

Not applicable.

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

Not applicable.

9. Exhibits

Exhibit 1: Form of Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2: Not applicable.

Exhibit 3: Not applicable.

Exhibit 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

[46] 15 U.S.C. § 78s(b)(2).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-CHX-2012-XX)
SELF-REGULATORY ORGANIZATIONS

Notice of Filing of Proposed Change to Rules by the Chicago Stock Exchange, Inc. to Establish Listing Standards for Issuers' Compensation Committees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on September 25, 2012 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, II and III below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b-2[3].

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

The Exchange proposes to amend Article 22, Rule 2 (Admittance to Listing), Rule 4 (Removal of Securities) and Rule 19 (Corporate Governance) to comport with Section 10(C) of the Exchange Act[4] and Rule 10C-1[5] thereunder that directs the Exchange to establish listing standards, among other things, that require each member of a listed issuer's compensation committee to be an independent member of its board of directors and relating to compensation committees and their use of compensation consultants, independent legal counsel and other advisers (collectively, "compensation advisers").The text of this proposed rule change is available on the Exchange's Web site at (www.chx.com) and in the Commission's Public Reference Room.

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. § 78s(b)(2).

[4] 15 U.S.C. § 78j-3.

[5] 17 CFR 240.10C-1.

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 amend Article 22, Rule 2 (Admittance to Listing), Rule 4 (Removal of Securities) and Rule 19 (Corporate Governance) to comport with Section 10(C) of the Exchange Act[6] and Rule 10C-1[7] thereunder, which directs the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be an independent member of its board of directors and listing standards relating to compensation committees and their use of compensation advisers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act") established Section 10C of the Exchange Act, which directed the Securities and Exchange Commission ("Commission" or "SEC") to require national securities exchanges and associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section

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[6] *Supra* note 4.

[7] *Supra* note 5.

10C's compensation committee and compensation adviser requirements.[8] Specifically, section 10C(a)(1) of the Exchange Act required the Commission to adopt rules directing the exchanges to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent."[9] Moreover, section 10C(a)(4) of the Exchange Act required the Commission to permit the exchanges to exempt particular relationships from the independence requirements, as each exchange determines is appropriate, taking into consideration the size of an issuer and any other relevant factors[10] and section 10C(e)(3) required the Commission to permit the exchanges to exempt categories of issuers from the requirements of section 10C, as each exchange determines is appropriate, taking into consideration of the impact of section 10C on smaller reporting issuers[11]. In addition, Section 10C(f) of the Exchange Act required the Commission to adopt rules directing the exchanges to establish listing standards that provide for requirements relating to compensation committees and compensation consultants, independent legal counsel and other advisers (collectively, "compensation advisers"), as set forth in paragraphs (b)-(e) of Section 10C.[12] Finally, Section 10C(c)(2) required each issuer to disclose in any proxy or consent solicitation material for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting), in accordance with Commission regulations, whether the issuer's compensation committee retained or obtained the advice of a compensation consultant; whether the work of the

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[8] 15 U.S.C. § 78j-3.

[9] 15 U.S.C. § 78j-3(a).

[10] 15 U.S.C. § 78j-3(a)(4).

[11] 15 U.S.C. § 78j-3(f)(3)(A).

[12] 15 U.S.C. § 78j-3(b)(2).

compensation consultant has raised any conflict of interest; and, if so, the nature of the conflict and how the conflict is being addressed.[13]

On July 27, 2012, the Commission promulgated Exchange Act Rule 10C-1 to implement the compensation committee listing requirements of Sections 10C of the Exchange Act. As such, the Exchange now proposes to amend its rules to comport with the new requirements.

Proposed Amendments to CHX Article 22

The Exchange proposes to amend portions of Article 22, Rule 2 (Admittance to Listing), Rule 4 (Removal of Securities) and Rule 19 (Corporate Governance) to establish listing standards that require each member of a listed issuer's compensation committee to be an "independent" member of its board of directors, to adopt standards relating to compensation committees' authority to retain compensation advisers and to clarify the consequences to issuers for failure to comply with these proposed amendments. It is important to note that virtually all of the proposed amendments are in Rule 19(d), which currently outlines all of the listing standards with respect to issuers' compensation committees.

Proposed Rule 2 and Rule 4(a)

Proposed Rule 2 provides that the Exchange's Board of Governors may list securities once the requirements of Article 22 are met and upon terms, conditions and payment of fees as the Exchange's board of directors may from time to time prescribe. In doing so, proposed Rule 2 adopts much of the current Rule 2, while only clarifying that the Board of Governors may only admit securities "once the requirements of this Article are met." Also, proposed Rule 4(a) provides that securities may be removed from the list, with notice, by either the issuer or the Exchange, for any reason, including an issuer's failure to comply with the listing standards of

[13] 15 U.S.C. § 78j-3(c)(2).

this Article 22. In doing so, proposed Rule 4(a) adopts much of the current Rule 4(a), while inserting language that states that securities may be delisted by either the issuer or the Exchange and clarifies that securities may be removed for any reason, including an issuer's failure to comply with the requirements of this Article, which includes proposed Rule 19(d). Current Rule 4(b)-(g) establish the procedures under which a security may be delisted, to which the Exchange proposes no amendments.

As such, proposed Rule 2 and Rule 4, considered in conjunction with current Article 22, Rule 1[14], comport with Exchange Act Rule 10C-1(a)(1) that requires the Exchange to "prohibit the *initial and continued* listing of any equity security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section." That is, the purpose of these proposed amendments is to clarify the potential consequences of an issuer's failure to comply with CHX Article 22, which includes the proposed compensation committee listing standards.

Proposed Rule 19(d)(1), 19(d)(2) and 19(p)(3)

Proposed Rule 19(d)(1) states that an issuer's "compensation committee," as defined under proposed Rule 19(d)(2)(A), or its "functional equivalent," as defined under proposed Rule 19(d)(2)(B), shall be comprised solely of "independent directors," as defined under proposed Rule 19(p)(3). In turn, proposed Rule 19(d)(2)(A) states that a "compensation committee" means a committee of the board of directors that is designated as the compensation committee; or in its absence, a committee of the board of directors performing functions typically performed by a compensation committee, including oversight of the executive compensation, even if it is not

[14] CHX Article 22, Rule 1 states, in pertinent part, that "the requirements, set forth in this Article, must be met in order for the Exchange to entertain an application for listing."

designated as the compensation committee or also performs other functions. Also, proposed Rule 19(d)(2)(B) states that in the absence of a committee as described above, the members of the board of directors who oversee executive compensation matters on behalf of the board of directors, who together must comprise a majority of the board's independent directors, in lieu of a formal committee of the board of directors. That is, the Exchange proposes to define "compensation committee" as any formal committee that is given the responsibility of determining executive compensation and "functional equivalent" as group of independent directors that perform such functions outside a formal committee structure. Also, proposed Rule 19(p)(3) defines "independent director" as a person who is a member of the issuer's board of directors, other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship, which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of an independent director. The proposed rule further states that the issuer's board is responsible for making an affirmative determination that no such relationship exists and lists seven specific instances where a director shall not be considered independent[15].

[15] Proposed Rule 19(p)(3)(A)-(G) virtually adopts current Rule 19(p)(3)(A)-(G) and provides that the following persons shall not be considered independent: (A) a director who is, or during the past three years, was employed by the issuer or its parent or subsidiary; (B) a director or an immediately family member of a director who had accepted payments from the issuer or its parent or subsidiary in excess of $120,000 in the current fiscal year or any of the past three fiscal years, with exceptions for payments received for services to the board, payments arising from investments in the issuer's securities, compensation paid to an immediate family member who is an employee, but not an executive officer, of the issuer, benefits under a tax-qualified retirement plan, non-discretionary compensation or loans permitted under Section 13(k) of the Exchange Act; (C) a director who is an immediate family member of an individual who is, or at any time during the past three years was, employed by the issuer or by any parent or subsidiary of the issuer as an executive officer; (D) a director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments for property or services, in the current or any of the past three fiscal years, that exceed 5% of the recipient's consolidated gross

In order to implement proposed Rule 19(d)(1) and Rule 19(d)(2), the Exchange proposes to delete current Rule 19(d)(1), which outlines how the compensation of a chief executive officer is to be determined and current Rule 19(d)(2), which outlines how a the compensation of other officers are to be determined, and restate those rules with amendments, as proposed Rule 19(d)(3). Moreover, the only substantive differences between the current and proposed Rule 19(p)(3) are that the proposed rule clarifies that an independent director is a "member of the issuer's board of directors" and that the concern over the independence of such a director is regarding the director's ability to carry out the "specific responsibilities of an independent director." In addition, proposed Rule 19(p)(3)(B) amends the threshold amount for payments to directors for permissible services from $60,000 to $120,000.[16]

As such, proposed Rule 19(d)(1) and Rule 19(p)(3) comport with the requirements of Exchange Act Rule 10C-1(b)(1)(i) and (ii). Initially, as mandated by Exchange Act Rule 10C-1(b)(1)(i), which states, "each member of a compensation committee must be a member of the board of directors of the listed issuer, and must otherwise be independent," proposed Rule 19(d)(1) requires members of an issuer's compensation committee or functional equivalent be "independent directors" and, in turn, proposed Rule 19(p)(3) defines a "director," in relevant

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revenues for that year, or $200,000, whichever is more, other than payments arising solely from investments in the issuer's securities or payments under non-discretionary charitable contribution matching programs; (E) a director of the issuer who is, or has an immediate family member who is, employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer serve on the compensation committee of such other entity. (F) A director who is, or has an immediate family member who is, a current partner of the issuer's outside auditor, or who has a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during the past three years; (G) In the case of an investment company, in lieu of paragraphs (A –(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

[16] *Id.*

part, as a "person who is member of the issuer's board of directors." Moreover, proposed Rule 19(d)(2) incorporates the definition of a "compensation committee" as defined under Exchange Act Rule 10C-1(c)(2), while organizing that definition in a manner that would make clear the Exchange's distinction between (1) formal committees of the board of directors, *i.e.* a compensation committee or a committee assigned functions typical of a compensation committee and (2) functional equivalent non-committees, which are simply comprised of a majority of an issuer's independent directors. As discussed in the Commission's release, this distinction is essential to clearly enunciate which proposed rules apply to both formal committees of the board and functional equivalents and which proposed apply only to formal committees.[17]

Moreover, proposed Rule 19(p)(3)(A)-(G) contemplates the required factors stated in Exchange Act Rule 10C-1(b)(1)(ii), where the Exchange's definition of "independent director" takes into consideration the director's source of compensation and affiliations. Specifically, Exchange Act Rule 10C-1(b)(1)(ii)(A) requires the Exchange to consider "the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory or other compensatory fee paid by the issuer to such a member of the board of directors," whereas Exchange Act Rule 10C-1(b)(1)(ii)(B) requires the Exchange to consider "whether a member of the board of directors of an issuer is affiliated with the issuer[18], a

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[17] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 11-13.

[18] The Exchange understands "affiliated with the issuer" to have the same meaning as "affiliated with a specified person," as it is defined under Exchange Act Rule 10A-3(e)(1)(a)(i) [17 CFR 240.10A-3(e)(1)(i)], which states, in pertinent part, "… a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." The term "control" is explained under paragraph (e)(1)(a)(ii)(A) [17 CFR 240.10A-3(e)(1)(ii)(A)], "a person will be deemed not to be in control of a specified person for purposes of this section if the person: (1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and (2) is not

subsidiary of the issuer or an affiliate of a subsidiary of the issuer." The Exchange submits that each one of the subparagraphs (A)-(G), in its current form, adequately address these considerations.

Current Rule 19(p)(3)(A) precludes from being considered independent a director who currently is or was, during the past three years, employed by the issuer or parent or subsidiary of the issuer. This preclusion is based, in part, on Exchange Act Rule 16b-3(b)(3)(i) [19], which excludes from the definition of a "non-employee director" a director who is an officer of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer. The Exchange submits that a director who is or was an executive officer or employee of the issuer could never independent due to the nature of professional relationships that are formed in an employment setting and the consequences that flow therefrom. For example, a director who is employed by the issuer may have her employee compensation (i.e. salary, bonuses, etc …) affected by her actions as a member of the compensation committee. Moreover, a director who recently ended her employment with the issuer may still maintain personal relationships with executive officers that may compromise independent judgment. Consequently, the look-back provision is necessary, because the nature of such personal relationships may remain unchanged for sometime after the director ceased being employed by the issuer.

Proposed Rule 19(p)(3)(B) precludes a director from being independent, where the director or an immediate family member of the director accepted payments from the issuer or

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an executive officer of the specified person." Moreover, paragraph (e)(1)(iii) [17 CFR 240.10A-3(e)(1)(iii)], list the following to be deemed affiliates: "(A) An executive officer of an affiliate; (B) a director who also is an employee of an affiliate; (C) A general partner of an affiliate; and (D) A managing member of an affiliate."

[19] 17 CFR 240.16b-3(b)(3)(i).

parent or subsidiary of the issuer in excess of $120,000 in the current fiscal year or any of the past three fiscal years, excluding (1) compensation for board or board committee service; (2) payments arising solely from investments in the issuer's securities; (3) compensation paid to an immediate family member who is a non-executive employee of the issuer or a parent or subsidiary of the issuer; (4) benefits under a tax-qualified retirement plan; (5) non-discretionary compensation; or (6) loans permitted under Section 13(k) of the Act. The only proposed amendment to current Rule 19(p)(3)(B) is to increase the cap amount from $60,000 to $120,000, so as to remain in lockstep with other exchanges, such as BATS[20] and disclosure guidelines under Item 404(a) of Regulation S-K[21], both of which set threshold amounts at $120,000.

Similar to subparagraph (A),proposed subparagraph (B) is also based in part on Exchange Act Rule 16b-3(b)(3)(i), which excludes from the definition of "non-employee director," a director who receives compensation, either directly or indirectly, from the issuer or a parent or subsidiary of the issuer for services rendered as a consultant or in any capacity other than as a director, except for an amount that does not exceed $120,000, pursuant to Item 404(a) of Regulation S-K[22]. The Exchange acknowledges that a director who meets the definition of a

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[20] BATS Rule 14.10(c)(1)(B) states, in pertinent part, that an "'independent director' means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director" and paragraph (c)(1)(B)(ii) precludes from being considered independent "a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence."

[21] 17 CFR 229.404.

[22] Item 404(a) of Regulation S-K [17 CFR 229.404] mandates disclosure requirements for transactions exceeding $120,000 in which the registrant was a participant and in which any "related person" has a direct or indirect material interest. In the context of Item 404(a), a "related person" includes any director of the registrant.

"non-employee director" is not necessarily "independent." However, the Exchange submits that a cap of $120,000 on affected payments are adequately high to allow a director or immediate family member to receive payments for permissible services to the issuer, while sufficiently low as to reasonably ensure that the director is able to exercise independent judgment. Moreover, a cap on such payments is preferable to an absolute rule that precludes director independence for any payments made. This is because the category of services contemplated by this subparagraph (B), such as consulting services, are inherently independent from the ordinary business function of the issuer, in contrast to payments received in the context of employment. As such, receiving payments for such independent services do not adversely impact the ability of the director to be independent. The Exchange submits that in determining director independence, this subparagraph strikes a good balance between allowing directors to continue to provide valuable independent services and setting the threshold at which the amount of payments received would likely begin to impact independent judgment. Given these considerations, the Exchange submits that payments that arise from independent permissible services should not *per se* disqualify a director from being considered independent.

In recognizing the intimate nature of relationship between a director and an immediate family member[23], the Exchange submits that immediate family members of a director that fall under the purview of paragraph (B) should also preclude such a director from being considered independent. For the same reason, the Exchange has also included a director's relationship to such immediate family members within the purview of paragraphs (C)-(F). With respect to the six categories of payments that excluded from the cap requirement of this subparagraph (B), the

[23] Pursuant to CHX Rule 19(p)(2), an "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and any person who has the same residence.

Exchange submits that such exceptions are appropriate because those payments are nondiscretionary and/or predetermined payments. As such, these payments are immaterial to a director's ability to be independent, where it is unlikely that these payments could be unilaterally altered by any executive officer, at least without the knowledge of the board of directors.

Current Rule 19(p)(3)(C) precludes a director who is an immediate family member of an individual who currently is or was, during the past three years, employed as an executive officer of the issuer or parent or subsidiary of the issuer. Given the intimate nature of the relationship between immediate family members, the Exchange submits that where a director's immediate family member is an executive officer of the issuer, the director is *per se* not independent. This is because the nature of the personal relationship between the director and immediate family member who is an executive officer will likely compromise independent judgment, especially in the context of determining the compensation of the immediate family member. It is important to note that although this paragraph does not include immediate family members who are non-executive employees of the issuer, Rule 19(p)(3) still allows for a board of directors to nonetheless find that such a relationship would preclude a director from being independent. However, the Exchange submits that establishing an absolute rule would be inappropriate and that an issuer's boards of directors is better equipped to assess such relationships on a case by case basis.

Current Rule 19(p)(3)(D) precludes from being independent a director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made or from which received payments for property or services, in the current or any of the past three fiscal years, that exceed 5% of the

recipient's consolidated gross revenues for that year, or $200,000, whichever is more, excluding payments arising (1) solely from investments in the issuer's securities or (2) payment under non-discretionary charitable contribution matching programs. The purpose of this proposed rule is to scrutinize directors who benefit from their business activities with the issuer when determining their ability to exercise independent judgment.

Similar to subparagraph (B), the Exchange submits that placing a cap on value of property or services received or given is preferable to a rule that precludes director independence for any such activity. This is because the nature of corporate governance is as such that directors are frequently affiliated with multiple corporate entities in the same or similar fields and inevitably, these various entities deal with each other in the ordinary course of their respective businesses. Thus, the Exchange submits that so long as such activities do not exceed 5% of the payment recipient's consolidated gross revenues for that year or $200,000, whichever is more, the activity is ordinary enough so as to not adversely impact the director's ability to be independent. In addition, the exclusions to this paragraph are necessary so as to exclude categories of payments that are non-discretionary and pre-determined, therefore immaterial to a director's ability to be independent.

Current Rule 19(p)(3)(E) precludes from being independent a director who is or has an immediate family who is employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer served on the compensation committee of the other entity. The Exchange submits that a director cannot be independent where the director is charged with determining the compensation of an executive, who in turn, is charged with determining the director's compensation in her capacity as an executive officer of the other entity. This scenario is obviously improper, as it may open the door to, among other

things, undue influence and breaches of fiduciary duty. Certainly, a director subjected to such factors would not be able to exercise independent judgment. Also, given the personal nature of a family relationship, directors who have immediate family member who are employed as an executive officer by the aforementioned other entity should also be disqualified from being considered independent.

Current Rule 19(p)(3)(F) precludes from being independent a director (1) who is or has an immediate family member who is a current partner of the issuer's outside auditor or (2) who has a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during the past three years. The primary purpose of this subparagraph is to prevent a director, who has or had a direct association with the issuer's outside auditor, from being placed on the issuer's audit committee. This is because such a director would be privy to information that only the outside auditor would know and could, in turn, use that information to the advantage of an issuer, defeating the original purpose of an outside auditor. Therefore, merely having access to this knowledge would render such a director unable to exercise independent judgment.

Finally, current Rule 19(p)(3)(G) applies to investment companies in lieu of paragraphs (A)-(F) and precludes from being independent a director who is an "interested person," as that term is defined under section 2(a)(19) of the Investment Company Act of 1940 ("Investment Company Act")[24]. The Exchange proposes to maintain the exemption of open-ended and closed-ended investment companies, as those terms are defined under section 4 and 5(a) of the

[24] 15 USCS § 80a-2(a)(19).

Investment Company Act[25], from the compensation committee requirements of this proposed Rule 19(d). The exemptions are discussed in detail below through proposed Rule 19(d)(5)(B)(iv).

In sum, proposed Rule 19(d)(1) and Rule 19(p)(3) clearly comport with the requirements of Exchange Act Rule 10C-1(b)(1)(i) and (ii). As mandated by Exchange Act Rule 10C-1(b)(1)(i), proposed Rule 19(d)(1) and Rule 19(p)(3) require members of an issuer's compensation committee or functional equivalent to be independent members of an issuer's board of directors. Also, proposed Rule 19(d)(2) defines the terms "compensation committee" and "functional equivalent" nearly identical, but for a slight difference in organization, to the Commission's definition of "compensation committee," under Exchange Act Rule 10C-1(c)(2). Also, as mandated by Exchange Act Rule 10C-1(b)(1)(ii), current Rules 19(p)(3)(A) – (F) clearly contemplates the source of a director's compensation and affiliations with the issuer in defining an "independent director." Specifically, in contemplating a director's affiliation with issuer, subparagraph (A) precludes from being independent a director who is, or during the past three years was, employed by the issuer or parent or subsidiary of the issuer and subparagraph (C) preclude from being independent a director whose immediate family member is, or during the past three years was, employed by the issuer or parent or subsidiary of the issuer as an executive officer. Also, in contemplating a director's source of compensation, subparagraph (B) precludes from being considered independent a director who receives payments for permissible services beyond a specified threshold, subparagraph (D) precludes from being independent a director who is, or has an immediate family member who is affiliated with any organization to which the

[25] Pursuant to Section 4 and 5(a)(1) of the Investment Company Act [15 USCS § 80a-4 and 80a-5(a)(1)], an "open-end company" means a management company, other than a unit investment trust or face-amount certificate company, which is offering for sale or has outstanding any redeemable security of which it is the issuer. Pursuant to section 5(a)(2) [15 USCS § 80a-5(a)], a "closed-end company" means any management company other than an open-end company.

issuer made or from which received payments for property or services, in the current or any of the past three fiscal years, beyond a specified threshold and subparagraph (E) precludes a director who is, or has an immediate family member who is, employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer served on the compensation committee of such other entity. Finally, subparagraph (F) precludes from being independent a director who is or who has a partner who is or was affiliated with the issuer's outside auditor. Thus, the Exchange submits that Proposed Rule 19(d)(1), Rule 19(d)(2) and Rule 19(p)(3) accurately and reasonably reflect the requirements of Exchange Act Rule 10C-1.

Proposed Rule 19(d)(3)

Proposed Rule 19(d)(3) is a consolidated restatement of current Rule 19(d)(1) and 19(d)(2). In doing so, current Rule 19(d)(3)(A) has been deleted and restated as proposed Rule 19(d)(5)(A)(i), with some syntax amendments to improve logical flow and organization and current Rule 19(d)(3)(B) has been deleted and restated under proposed Rule 19(d)(5)(B)(i). Specifically, proposed Rule 19(d)(3) states that the function of a compensation committee or functional equivalent is to determine or recommend to the issuer's board of directors for determination the compensation of issuer's chief executive officer and other officers. It continues that the chief executive officer shall not be present during the deliberations regarding her own compensation, but that the chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote. Aside from syntax, the only difference between this proposed rule and current Rule 19(d)(1) and Rule 19(d)(2) is that the proposed rule omits the portions of the current rules that mention that compensation of executive officers shall be determined or recommended to the board by "either by (A) a majority of the issuer's

independent directors or (B) a compensation committee comprised solely of independent directors."[26] The reason for this omission is that "compensation committee" and "majority of the issuer's independent directors" are already respectively defined under proposed Rule 19(d)(2) as "compensation committee" and its "functional equivalent." The Exchange submits that this organizational amendment is necessary for the logical flow of the proposed Rule 19(d).

Proposed Rule 19(d)(4)

Proposed Rule 19(d)(4)(A)-(E) outlines listing standards mandated under Exchange Act Rule 10C-1(b)(2), concerning the authority of compensation committees to retain compensation consultants, outside legal counsel and other advisers (collectively "compensation advisers").

Specifically, pursuant to Exchange Act Rule 10C-1(b)(2)(i), proposed subparagraph (A) provides that an issuer that maintains a "compensation committee," as defined under proposed Rule 19(d)(2)(A), shall give such a compensation committee sole discretion to retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser. Also, pursuant to Exchange Act Rule 10C-1(c)(2)(iii), proposed subparagraph (A) continues by stating that it does not apply to issuer's that maintain a "functional equivalent," as defined under proposed Rule 19(d)(2)(B), to a compensation committee.[27] The reasoning behind this exclusion

[26] Currently, CHX Article 22, Rule 19(d)(1) states "compensation of the issuer's chief executive officer shall be determined, or recommended to the board for determination, either by (A) a majority of the independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may not be present during voting or deliberations" and Rule 19(d)(2) states "compensation of the issuer's other officers, as that term is defined in Section 16 of the Act, shall be determined, or recommended to the board for determination, either by (A) a majority of the issuer's independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote."

[27] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 12.

is that since an action by independent directors acting outside of a formal committee structure would generally be considered action by the full board of directors, it is unnecessary to apply this requirement to directors acting outside of a formal committee structure, as they retain all the powers of the board of directors in making executive compensation determinations.[28]

Also, pursuant to Exchange Act Rule 10C-1(b)(2)(ii), proposed subparagraph (B) provides that the compensation committee or functional equivalent shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel and other adviser retained by the compensation committee. It is important to note that unlike proposed subparagraph (A) proposed subparagraph (B) explicitly applies to both "compensation committees" and its "functional equivalent." In addition, pursuant to Exchange Act Rule 1C-1(b)(2)(iii), proposed subparagraph (C) states that nothing in this proposed Rule 19(d)(3) shall be construed to require the compensation committee or functional equivalent to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser nor to affect the ability or obligation of a compensation committee or functional equivalent to exercise its own judgment in fulfillment of its duties. Moreover, pursuant to Exchange Act Rule 10C-1(b)(3), proposed subparagraph (D) states that an issuer that maintains a compensation committee shall provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the compensation committee. Similar to proposed subparagraph (A), proposed

[28] *Id.*

subparagraph (D) continues by stating that it shall not apply to issuer's that maintain a functional equivalent to a compensation committee, pursuant to Exchange Act Rule 10C-1(c)(2)(iii).[29]

Finally, pursuant to Exchange Act Rule 10C-1(b)(4), proposed subparagraph (E) states that the compensation committee or functional equivalent may select a compensation consultant, legal counsel or other adviser, other than in-house legal counsel, only after taking into consideration the following six factors:(i) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser; (ii) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser; (iii) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee; (v) any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and (vi) any business or personal relationship of the compensation consultant, legal counsel, or other adviser or the person employing the adviser with an executive officer of the issuer. The Exchange agrees with the Commission that these six factors, when considered together, are competitively neutral, as they will require compensation committees and functional equivalents to consider a variety of factors that may bear upon the likelihood that a compensation adviser can provide independent advice to the compensation committee, but will not prohibit committees

[29] *Supra* note 27.

from choosing any particular adviser or type of adviser.[30] Therefore, the Exchange proposed to add no further requirements or factors to be considered this subparagraph (E).

Proposed Rule 19(d)(5) and Paragraph .03(3) of the Interpretations and Policies

Proposed Rule 19(d)(5) outlines exceptions to the listing standards of this proposed Rule 19(d), pursuant to Exchange Act Rule 10C-1(b)(1)(iii), which requires the Exchange to exempt specified categories of issuers and gives the Exchange discretion to exempt certain director relationships from the requirements of Rule 10C-1(b)(1) and Rule 10C-1(b)(1)(5), which gives the Exchange discretion to exempt from the requirements of Exchange Act Rule 10C-1 any category of issuer, after considering relevant factors. In establish these exemptions, proposed Rule 19(d)(5) distinguishes between (A) *temporary exemptions*, (B) *general exemptions* and (3) *limited exemptions*.

Proposed Rule 19(d)(5) lists the *temporary exemptions* from proposed Rule 19(d). Proposed Rule 19(d)(5)(A)(i) is a restatement of current Rule 19(d)(3), which allows an issuer, under exceptional and limited circumstances, to temporarily appoint a non independent director to its compensation or functional equivalent one director who is not independent, for a term that shall not exceed two years from the date of appointment (unless the director becomes independent prior to the end of the two year period), if (1) the compensation committee or functional equivalent is comprised of at least three persons, including the proposed non-independent director; (2) the non-independent director is not a current officer or employee nor is an immediately family member of a current officer or employee; and (3) the issuer's board of directors determines that (a) the membership of the non-independent director on the

[30] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 40.

compensation committee or functional equivalent is required by the best interests of the company and its shareholders and (b) the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination.

The purpose of this exemption is to allow issuers to efficiently deal with unforeseen and exceptional circumstances, so as to ensure the smooth function of its compensation committee or functional equivalent. While doing so, the exemption clearly establishes guidelines to minimize the risk of abuse by requiring that the non-independent director's appoint be temporary, that such a director will not be an employee of the issuer and that such a director's appointment is made clear to the shareholders via a proxy statement or Form10-K or 20F, thereby eliminating the risk of undue influence from superiors or subordinates. Furthermore, the Exchange submits that it would not be in the public interest to burden issuers confronted with unforeseen and exceptional circumstances, especially where inaction by a compensation committee may result in a loss of executive talent to the detriment of shareholders. It is important to note that the same temporary exemption, with some differences for context, can be found in CHX Article 22, Rule 19(b)(1)(C)(i)[31] and given the similarities between that rule for audit committees and this

[31] CHX Article 22, Rule 19(b) governs listing standards for "audit committees and Rule 19(b)(1)(C)(i) states "one director who is not independent as required by section (b)(1)(A)(i) above, but who meets the criteria set forth in SEC Rule 10A-3 and who is not a current officer or employee (or an immediate family member of a current officer or employee) may be appointed to the audit committee, if the issuer's board under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or other applicable annual disclosure filed with the SEC), the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve on the audit committee for more than two years under this exception (unless he or she ultimately satisfies the definition of an independent director) and may not chair the audit committee."

proposed rule for compensation committees, the Exchange submits that this exemption is wholly appropriate and necessary.

In addition, proposed Rule 19(d)(5)(A)(ii) outlines an opportunity to cure defects, almost precisely as stated in Exchange Act Rule 10C-1(a)(3) and current CHX Article 22, Rule 19(b)(1)(C)(ii)[32] . Specifically, it states that if a member of an issuer's compensation committee or functional equivalent ceases to be an independent director for reasons outside the member's reasonable control, that member, with prompt notice by the issuer to the Exchange, may remain a member of the compensation committee or functional equivalent until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the member to be no longer an independent director.

Proposed Rule 19(d)(5)(B)(i)-(viii) list the *general exemptions* from proposed Rule 19(d). All of the exemptions listed under this subparagraph are (1) specific exemptions required under Exchange Act Rule 10C-1(b)(5); (2) proposed expansions of specific exemptions listed under Exchange Act Rule 10C-1(b)(1)(iii); or (3) exemptions already in effect under CHX Rules and proposed pursuant to Exchange Act Rule 10C-1(b)(5)(i). Some of the proposed exemptions fall under one or more of these categories and each exemption will discussed in this context.

Proposed subparagraph (i) exempts controlled companies from the requirements of proposed Rule 19(d), as mandated by Exchange Act Rule 10C-1(b)(5)(ii), with certain additional

[32] CHX Article 22, Rule 19(b) governs listing standards for "audit committees and Rule 19(b)(1)(C)(ii) and Rule 19(b)(1)(C)(ii) states "if a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A-3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs."

requirements[33]. Such issuers are already exempt from the current compensation committee requirements under current Rule 19(d)(3)(B). Under Rule 19(p)(1), "controlled company" is defined as a company of which more than 50 percent of the voting power is held by an individual, group or another company. This definition is consistent with Exchange Act Rule 10C-1(c)(3), which defines a "controlled company" as an issuer that is listed on a national securities exchange or by national securities association and of which more than 50 percent of the voting power for the election of directors is held by an individual, a group or another company. For reasons specific to the organizational structure of CHX Rules, the Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19, as proposed paragraph .03(6).

Proposed subparagraph (ii) exempts companies in bankruptcies from the requirements of proposed Rule 19(d). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(1) of the Interpretations and Policies of Rule 19[34]. Although Exchange Act Rule 10C-1(b)(1)(A)(iii)(2) already mandates that such companies be exempt from the independence requirements, subparagraph (ii) proposes to expand that exemption to all requirements under Exchange Act Rule 10C-1, pursuant to the Exchange's authority granted under Exchange Act Rule 10C-1(b)(5)(i). The purpose behind this exemption is to not overburden issuers that are struggling to emerge from bankruptcy. That is, it would not be in public interest to burden such companies with additional listing standards where such companies

[33] Pursuant to CHX paragraph .02 of the Interpretations and Policies of Rule 19, controlled companies that rely on this exemption are required to disclose in its annual proxy (or Form 10-K, 20-F, or other applicable annual disclosure filed with the SEC) that it is a controlled company and the basis for that determination.

[34] Paragraph .03(1) of the Interpretations and Policies of Rule 19 states that "limited partnerships and companies in bankruptcies are not required to comply with sections (a), (c) and (d) above."

are subject to a host of bankruptcy requirements that will fundamentally impact its survival. Given these considerations, the Exchange submits that it would be wholly appropriate to exempt companies in bankruptcy from all of the requirements of proposed Rule 19(d).

Proposed subparagraph (iii) exempts limited partnerships from the requirements of proposed Rule 19(d), as already codified in CHX rules as paragraph .03(1) of the Interpretations and Policies of Rule 19[35] . "Limited partnership" is defined as a form of business ownership and association consisting of one or more general partners who are fully liable for the debts and obligations of the partnership and one or more limited partners whose liability is limited to the amount invested[36]. Although Exchange Act Rule 10C-1(b)(1)(A)(iii)(1) already mandates that such companies be exempt from the independence requirements, subparagraph (iii) proposes to expand that exemption to all requirements under Exchange Act Rule 10C-1, pursuant to the Exchange's authority granted under Exchange Act Rule 10C-1(b)(5)(i). This exemption is due to the fact that the very ownership/management structure of limited partnerships that renders the independent director requirements inapplicable, as contemplated by Exchange Act Rule 10C-1(b)(1)(iii)(A)(1), would in turn, render the compensation consultant requirements unnecessary as well. By logical extension, the Exchange submits that it would be wholly appropriate to exempt limited partnerships from all of the requirements of proposed Rule 19(d).

Proposed subparagraph (iv) exempts from the requirements of proposed Rule 19(d) "closed-end and open-end management companies" registered under the Investment Company Act[37], as already codified in CHX rules as paragraph .03(2) of the Interpretations and Policies of

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[35] *Id.*

[36] *See* Unif. Ltd. P'ship Act §§ 102, 303 and 404 (2001).

[37] *Supra* note 25.

Rule 19[38]. Although Exchange Act Rule 10C-1(b)(1)(iii)(A)(3) only exempts open-end management investment companies from the independence requirement of the Rule 10C-1(b), the Exchange proposes to expand that exemption, pursuant to Rule 10C-1(b)(1)(iii)(A)(1), to include both open-end and closed-end management investment companies and to apply the exemption to all the requirements of Rule 10C-1. The Exchange submits that since registered investment companies are already subject to the requirements of the Investment Company Act, including, in particular, requirements concerning potential conflicts of interest related to investment adviser compensation[39], requiring such companies to comport with the requirements of this proposed Rule 19(d) would be duplicative and unnecessary.

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[38] Paragraph .03(2) of the Interpretations of Policies of Rule 19 entitled, "Closed-End and Open-End Management Companies" states, "(A) Closed-end management companies that are registered under the Investment Company Act of 1940 are not required to comply with sections (a) through (f) of this Rule; except that closed-end funds must (i) maintain an audit committee of at least three persons; and (ii) comply with the provisions of SEC Rule 10A-3 and the provisions of paragraphs (b)(1)(A)(iv), (b)(1)(B), (b)(2), (b)(3) and (f), above, subject to applicable exceptions. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. (B) Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of this Rule. (C) Open-end funds (including open-end funds that can be listed or traded as investment company units) are not required to comply with the provisions of sections (a) through (f) of this Rule; except that these funds must comply with the provisions of sections (b) and (f)(2), above, to the extent required by SEC Rule 10A-3. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company and must address this responsibility in the audit committee charter."

[39] 15 USCS § 80a-2, 15 USCS § 80a-3, 15 USCS § 80a-15, 15 USCS § 80a-17, 15 USCS § 80a-35.

Proposed subparagraph (v) exempts from the requirements of proposed Rule 19(d) any "foreign private issuer" that discloses in its annual report the reasons that it does not have an independent compensation committee, subject to the additional requirements of paragraph .03(4) of the Interpretations and Policies of Rule 19[40]. Moreover, subparagraph (v) adopts the definition of "foreign private issuer" as stated under Exchange Act Rule 3b-4[41]. Pursuant to Exchange Act Rule 10C-1(b)(4)(ii), the Exchange proposes to expand the Exchange Act Rule 10C-1(b)(1)(iii)(A)(4) exemption of foreign private issuers from only the independence requirements to all requirements under Rule 10C-1. This is because foreign private issuers are already subject to corporate regulations of their respective home countries and requiring such issuers to comport with Exchange Act Rule 10C-1 would be cumulative, if not contradictory. Moreover, the Exchange submits that requiring a foreign private issuer to disclose in its annual report the reasons why it does not have an independent compensation committee in order for the exemption to apply is sufficient.

Proposed subparagraph (vi) exempts from the requirements of proposed Rule 19(d) clearing agencies that are registered pursuant to Section 17A of the Exchange Act or that are

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[40] Paragraph .03(4) of the Interpretations of Policies of Rule 19 states, "foreign issuers will be permitted to comply with their home country practices with respect to corporate governance (and thus are exempt from the requirements of sections (a)- (f), above), except to the extent that SEC Rule 10A-3 requires compliance with specific audit committee requirements in sections (b) and (f)(2) above. Foreign issuers must provide English language disclosure of any significant ways in which their corporate governance practices differ from those required for domestic issuers under this Rule 19. This disclosure may be provided either on the issuer's website or in the annual report distributed to shareholders in the U.S. If the disclosure is made only on an issuer's website, the issuer must note that fact in its annual report and provide the web address at which the disclosure may be reviewed."

[41] Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)] defines "foreign private issuer" as "any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers and directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States."

exempt from the registration requirements of section 17A(b)(7)(A) of the Exchange Act that clear and list a security futures product or standardized option, pursuant to Exchange Act Rule 10C-1(b)(5)(iii) and (b)(5)(iv). The Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19 (General Exemptions from Governance Rules), as proposed paragraph .03(7). The reasoning behind this exemption is that such securities are not equity securities and therefore are outside the scope of Exchange Act Rule 10C-1(a)(1).

Proposed subparagraph (vii) exempts from the requirements of proposed Rule 19(d) passive business organizations, such as royalty trusts, or derivatives and special purpose entities, pursuant to the Exchange's discretion to exempt certain categories of issuers under Exchange Act Rule 10C-1(b)(5)(iii). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(3) of the Interpretations and Policies of Rule 19. The reasoning behind exempting passive business organizations, such as royalty trusts, is that such entities are structured fundamentally different from the conventional equities issuers that this Exchange Act Rule 10C-1 aims to guide. For instance, in the case of royalty trusts, such entities do not have employees and virtually all profits earned are distributed to shareholders. As such, these entities have no need for compensation committees. Moreover, special purpose entities are frequently utilized to securitize receivables, such as loans. Similar to the reasoning behind exempting clearing agencies[42] that issue futures products and standardized options, purchasers of securities issued by such special purpose entities do not make an investment decision based on the issuer, but rather, the underlying security. As a result, information about

[42] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 51.

the special purpose entities, its officers and directors and its financial statements is much less relevant to investors in these securities than information about the underlying security.

Proposed subparagraph (viii) exempts from the requirements of proposed Rule 19(d) issuers listing only preferred or debt securities on the Exchange that are subject to the multiple listing exception described in paragraph .04 of the Interpretations and Policies of Rule 19, pursuant to the Exchange's discretion to exempt certain categories of issuers under Exchange Act Rule 10C-1(b)(5)(iii). Such issuers are already exempt from the current compensation committee requirements under paragraph .03(5) of the Interpretations and Policies of Rule 19. The reasoning behind this exemption is that issuers of preferred or debt securities are already subject to the requirements of the rules of the exchange on which they are primarily listed. As such, this proposed exemption prevents such issuers from having to comport with multiple sets of rules. Moreover, the additional purpose behind exempting debt securities is that such securities are not equity securities, as they do not impart an ownership interest to the holder of such securities. Given these considerations, such securities fall outside the scope of Exchange Act Rule 10C-1(a)(1).

Moreover, proposed Rule 19(d)(5)(C) establishes *limited exemptions* to proposed Rule 19(d). Specifically, proposed subparagraph (i) exempts small business issuers[43] from only the compensation advisers requirement of proposed Rule 19d(d)(4), as opposed to all of the requirements of Exchange Act Rule 10C-1 per Exchange Act Rule 10C-1(b)(5)(ii). The Exchange further proposes to include this exemption under paragraph .03 of the Interpretations and Policies of Rule 19 (General Exemptions from Governance Rules), as proposed paragraph

[43] Under Rule 19(p)(5), "small business issuers" is the equivalent to "smaller reporting issuer," as defined under Exchange Act Rule 12b-2.

.03(8). The reasoning behind requiring small business issuers to comport with the independent director requirements is that under current CHX rules, small business issuers are already subject to such requirements. In light of the Commission's concerns about the burden that the additional requirements of Exchange Act Rule 10C-1 would have on smaller reporting issuers[44], the Exchange proposes to exempt such issuers from only the compensation advisers requirements in proposed Rule 19(d)(4). The Exchange submits that maintaining the requirement that small business issuers determine the compensation of an executive officer pursuant to proposed Rule 19(d)(1)-(3) will not impose an additional burden on such issuers as they are already required to follow current Rule 19(d)(1) and 19(d)(2).

Proposed Paragraph .03(5) of the Interpretations and Policies

Pursuant to Exchange Act Rule 10C-1(a)(4), the Exchange proposes to amend paragraph .05 of the Interpretations and Policies of Rule 19 entitled, "Transition Periods and Compliance Dates," to establish a timetable for issuers to conform to the requirements of proposed Rule 19. Specifically, proposed paragraph .05(6) states that the compensation committee requirements mandated by SEC Rule 10C-1, as amended section (b) and paragraph .03 of the Interpretations and Policies of this Rule 19, will become effective as follows: (A) foreign private issuers shall comply with these requirements July 1. 2014; (B) all other issuers shall comply with the requirements by the earlier of: (i) The issuer's first annual shareholders meeting after July 19, 2013; or (ii) January 31, 2014. This proposed compliance time frame for issuers supposes that the effective date for the proposed rules will be July 27, 2013, which is the last possible date permissible by Exchange Act Rule 10C-1(a)(4)(ii).

[44] *See* Listing Standards for Compensation Committees, Release No. 33-9330 (July 27, 2012) [17 CFR Parts 229 and 240], at p. 62.

The Exchange submits that this two-tiered time frame will allow all categories of affected issuers to conform to the amendment requirements as soon as practicable. Specifically, the Exchange proposes that a longer time frame is necessary for foreign issuers so that they would have sufficient time to disclose in their annual report the items necessary to be exempt from proposed Rule 19(d). As for all other domestic issuers, given that the proposed requirements are not so different from the current compensation committee requirements of CHX rules, the Exchange submits that it is reasonable for such issuers to be subject to a shorter compliance time frame. As such, the Exchange proposes to require domestic issuers to comport with the proposed requirements by the earlier of the issuers' first annual shareholders meeting after the effective date of the proposed rule or January 31, 2014.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of Section 6(b)(5)[46] in particular, 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. Specifically, the Exchange believes that the proposed rule change supports the objective of the Exchange Act by providing harmonization between CHX Rules and rules of all other organization subject to the requirements of Exchange Act Rule 10C-1, which would result in less burdensome and more efficient regulatory compliance.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

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 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-CHX-2012-04 on the subject line.
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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 No. SR-CHX-2012-04. 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 changes 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the 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 available publicly. All submissions should refer to File No. SR-CHX-2012-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Elizabeth M. Murphy

Secretary

[47] 17 CFR 200.30-3(a)(12).

Exhibit 5

Additions are underlined; deleted text is [in brackets]

RULES OF CHICAGO STOCK EXCHANGE, INC.

* * *

ARTICLE 22.

Listed Securities

* * *

Rule 2. Admittance to Listing

The Board of Governors may admit securities to the list and to trading once the requirements of this Article are met and upon such terms and conditions and upon payment of such fees as the Board may from time to time prescribe.

Rule 4. Removal of Securities

(a) *Removal of Securities*. Securities may be removed from the list as provided in paragraphs (b) - (e)[,] below. Securities may be removed with notice, by either the issuer or the Exchange, for any reason, including an issuer's failure to meet the listing standards of this Article 22.

(b) – (g). Unchanged

Rule 19. Corporate Governance

The following Rule 19 applies to Tier I issuers:

(a) – (c). Unchanged

(d) Compensation Committee

[(1) Compensation of the issuer's chief executive officer shall be determined, or recommended to the board for determination, either by (A) a majority of the independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may not be present during voting or deliberations.]

(1) *Composition*. An issuer's "compensation committee," as defined under paragraph (d)(2)(A) or its "functional equivalent," as defined under paragraph (d)(2)(B), shall be comprised solely of "independent directors," as defined under paragraph (p)(3).

[(2) Compensation of the issuer's other officers, as that term is defined in Section 16 of the Act, shall be determined, or recommended to the board for determination, either by (A) a majority of the issuer's independent directors or (B) a compensation committee comprised solely of independent directors. The chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote.]

(2) *Definitions*. For the purposes of this paragraph (d), the following terms shall have these ascribed meanings.

(A) A "compensation committee" means:

(i) A committee of the board of directors that is designated as the compensation committee; or

(ii) In the absence of a committee of the board of directors that is designated as the compensation committee, a committee of the board of directors performing functions typically performed by a compensation committee, including oversight of the executive compensation, even if it is not designated as the compensation committee or also performs other functions.

(C) A "functional equivalent" to a compensation committee means the members of the board of directors who oversee executive compensation matters on behalf of the board of directors, who together must comprise a majority of the board's independent directors, in lieu of a formal committee of the board of directors.

[(3) Exceptions.

(A) If the compensation committee is comprised of at least three persons, one director who is not independent and is not a current officer or employee (or an immediate family member of a current officer of employee), may be appointed to the compensation committee if the issuer's board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years (unless he or she ultimately satisfies the definition of an independent director)

(B) A controlled company is exempt from the requirements of this paragraph (d).]

(3) *Function*. The compensation committee or functional equivalent, as defined under paragraph (d)(2), shall determine or recommend to the issuer's board of directors for determination the compensation of the issuer's chief executive officer and other officers, as those terms are defined in Section 16 of the Act. The chief executive officer shall not be present during the deliberations regarding compensation of the chief executive officer. However, the chief executive officer may be present during deliberations regarding compensation of other officers, but may not vote.

(4) Compensation consultants, legal counsel and other advisers.

(A) *Authority to retain*. An issuer that maintains a "compensation committee," as defined under paragraph (d)(2)(A), shall give to it sole discretion to retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser. This subparagraph (A) shall not apply to issuer's that maintain a "functional equivalent," as defined under paragraph (d)(2)(B), to a compensation committee.

(B) *Responsibility*. The compensation committee or functional equivalent shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel and other adviser retained by the compensation committee.

(C) *Consultant recommendations not binding*. Nothing in this paragraph (d)(3) shall be construed to require the compensation committee or functional equivalent to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser nor to affect the ability or obligation of a compensation committee or functional equivalent to exercise its own judgment in fulfillment of its duties.

(D) *Funding for consultants*. An issuer that maintains a compensation committee shall provide for appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the compensation committee. This subparagraph (D) shall not apply to issuer's that maintain a functional equivalent to a compensation committee.

(E) *Mandatory independence assessment of consultant*. The compensation committee or functional equivalent may select a compensation consultant, legal counsel or other adviser, other than in-house legal counsel, only after taking into consideration the following factors:

(i) The provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) The amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) Any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) Any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and

(vi) Any business or personal relationship of the compensation consultant, legal counsel, or other adviser or the person employing the adviser with an executive officer of the issuer.

(5) Exemptions

(A) *Temporary Exemptions.*

(i) *Temporary appointment of a non-independent director*. Under exceptional and limited circumstances, the issuer's board of directors may temporarily appoint to a compensation committee or functional equivalent, one director who is not independent, for a term that shall not exceed two years from the date of appointment (unless the director becomes independent prior to the end of the two year period), if the (a) the compensation committee or functional equivalent is comprised of at least three persons, including the proposed non-independent director; (b) the non-independent director is not a current officer or employee nor is an immediately family member of a current officer or employee; and (c) the issuer's board of directors determines that: (1) the membership of the non-independent director on the compensation committee or functional equivalent is required by the best interests of the company and its shareholders; and (2) the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination.

(ii) *Cure period for compensation committees*. If a member of an issuer's compensation committee or functional equivalent ceases to be an independent director for reasons outside the member's reasonable control, that member, with

prompt notice by the issuer to the Exchange, may remain a member of the compensation committee or functional equivalent until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the member to be no longer an independent director.

(B) *General Exemptions*. The following categories of issuers are generally exempt from the requirements of this paragraph (d):

(i) "Controlled companies," as defined under paragraph (p)(1) and subject to paragraph .02 of the Interpretations and Policies of Rule 19;

(ii) Companies in bankruptcies;

(iii) Limited partnerships;

(iv) Closed-end and open-end management companies registered under the Investment Company Act of 1940;

(v) "Foreign private issuer," as that term is defined in the section Rule 3b-4 of the Exchange Act, that discloses in its annual report the reasons that the foreign private issuer does not have an independent compensation committee, subject to the additional requirements of paragraph .03(4) of the Interpretations and Policies of Rule 19;

(vi) Clearing agencies that are registered pursuant to section 17A of the Act or that are exempt from the registration requirements of section 17A(b)(7)(A) of the Act that clear and list a security futures product or a standardized option;

(vii) Passive business organizations (such as royalty trusts) or derivatives and special purpose entities;

(viii) Issuers listing only preferred or debt securities on the Exchange will not be required to adhere to the requirements set out in sections (a)-(f) because they will be subject to the multiple listing exception described in Interpretation .04, below.

(C) *Limited Exemptions*. The following categories of issuers are exempt from the requirements of this paragraph (d) to extent detailed below:

(i) Small business issuers, as defined under paragraph (p)(5), are exempt from the requirements of paragraph (d)(4) only.

(e) – (o). Unchanged

(p) Definitions. For purposes of this Article 22, unless the context requires otherwise:

(1) – (2). Unchanged

(3) "Independent director" means a person who is a member of the issuer's board of directors, other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship, which, in the opinion of the issuer's board of directors, would interfere with the exercise of independent judgment in carrying out the specific responsibilities of an independent director. The Board has the responsibility to make an affirmative determination that no such relationship exists. The following persons shall not be considered independent:

(A) A director who is, or during the past three years was, employed by the issuer or by any parent or subsidiary of the issuer;

(B) A director who accepted or who has an immediate family member who accepted any payments from the issuer or any parent or subsidiary of the issuer in excess of [$60,000] $120,000 during the current fiscal year or any of the past three fiscal years, other than compensation for board or board committee service, payments arising solely from investments in the issuer's securities, compensation paid to an immediate family member who is an employee of the issuer or a parent or subsidiary of the issuer (but not if such person is an executive officer of the company or any parent or subsidiary of the company), benefits under a tax-qualified retirement plan, non-discretionary compensation or loans permitted under Section 13(k) of the Act;

(C) A director who is an immediate family member of an individual who is, or at any time during the past three years was, employed by the issuer or by any parent or subsidiary of the issuer as an executive officer;

(D) A director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments for property or services, in the current or any of the past three fiscal years, that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than payments arising solely from investments in the issuer's securities or payments under non-discretionary charitable contribution matching programs;

(E) A director of the issuer who is, or has an immediate family member who is, employed as an executive officer of another entity where, at any time during the past three years, any of the executive officers of the issuer serve[d] on the compensation committee of such other entity; [or]

(F) A director who is, or has an immediate family member who is, a current partner of the issuer's outside auditor, or who has a partner or employee of the issuer's outside auditor who worked on the issuer's audit at any time during the past three years[.]; or

(G) In the case of an investment company, in lieu of paragraphs (A) –(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

(4) – (6). Unchanged

• • • *Interpretations and Policies:*

.01 – .02 Unchanged

.03 **General Exemptions from Governance Rules**. Certain requirements of this rule do not apply to certain entities, as described below:

(1) Limited partnerships and companies in bankruptcies are not required to comply with sections (a), (c) and (d) above.

(2) Closed-End and Open-End Management Companies.

(A) Closed-end management companies that are registered under the Investment Company Act of 1940 are not required to comply with sections (a) through (f) of this Rule; except that closed-end funds must (i) maintain an audit committee of at least three persons; and (ii) comply with the provisions of SEC Rule 10A-3 and the provisions of paragraphs (b)(1)(A)(iv), (b)(1)(B), (b)(2), (b)(3) and (f), above, subject to applicable exceptions. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(B) Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of this Rule.

(C) Open-end funds (including open-end funds that can be listed or traded as investment company units) are not required to comply with the provisions of sections (a) through (f) of this Rule; except that these funds must comply with the provisions of sections (b) and (f)(2), above, to the extent required by SEC Rule 10A-3. Additionally, these issuers must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company and must address this responsibility in the audit committee charter.

(3) Passive business organizations (such as royalty trusts) or derivatives and special purpose entities that are exempt from the requirements of SEC Rule 10A-3 are not subject to any requirement under sections (a) through (f) this rule. To the extent that Rule 10A-3 applies to a passive business organization, derivative or special purpose security, such entities are required to comply with the provisions of paragraphs (b) and (f)(2) above, to the extent required by SEC Rule 10A-3.

(4) Foreign issuers will be permitted to comply with their home country practices with respect to corporate governance (and thus are exempt from the requirements of sections (a)- (f), above), except to the extent that SEC Rule 10A-3 requires compliance with specific audit committee requirements in sections (b) and (f)(2) above. Foreign issuers must provide English language disclosure of any significant ways in which their corporate governance practices differ from those required for domestic issuers under this Rule 19. This disclosure may be provided either on the issuer's website or in the annual report distributed to shareholders in the U.S. If the disclosure is made only on an issuer's website, the issuer must note that fact in its annual report and provide the web address at which the disclosure may be reviewed.

(5) Issuers listing only preferred or debt securities on the Exchange typically will not be required to adhere to the requirements set out in sections (a)-(f) because they will be subject to the multiple listing exception described in Interpretation .04, below. To the extent required by SEC Rule 10A-3, these issuers will only be required to comply with sections (b) and (f)(2) above.

(6) Controlled companies, as defined under paragraph (p)(1) above, are not required to comply with section (a), (c) and (d) above, subject to paragraph .02 of the Interpretations and Policies of Rule 19;

(7) Clearing agencies that are registered pursuant to section 17A of the Act or that are exempt from the registration requirements of section 17A(b)(7)(A) of the Act that clear and list a security futures product or a standardized option is not required to comply with section (d) above.

(8) Small business issuers, as defined under paragraph (p)(5), are exempt from the requirements of paragraph (d)(4).

.04 Unchanged

.05 **Transition Periods and Compliance Dates**. Sections (a)-(f) will become effective pursuant to the following schedule:

(1) Unchanged

(2) The other requirements of sections (a)-(f) will become effective on July 31, 2005 for foreign private issuers and small business issuers. For all other issuers, the requirements of sections (a)-(f) will become effective on the earlier of: (A) the issuer’s first annual shareholders meeting after July 1, 2004; or (B) January 31, 2005. If an issuer has a board with staggered terms, and a change is required with respect to a director whose term does not expire within this period, the issuer will have until its second annual meeting after the date specified above, but not later than December 31, 2005, to comply with the requirements of section (a).

(3) – (5) Unchanged

(6) The compensation committee requirements mandated by SEC Rule 10C-1, as amended section (b) and paragraph .03 of the Interpretations and Policies of this Rule 19, will become effective as follows:

(A) Foreign private issuers shall comply with these requirements July 1. 2014;

(B) All other issuers shall comply with the requirements by the earlier of:

(i) The issuer's first annual shareholders meeting after July 27, 2013; or

(ii) January 31, 2014;

.06 Unchanged