

Accordingly, the Commission believes that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In this regard, the Commission notes that the proposed rule change will standardize the BSE's closing procedures on expiration days with those on the NYSE.¹¹ On expiration days, the BSE proposal will impose a 3:40 p.m. deadline for entry of all MOC orders. In conjunction with the prohibition on cancellation or reduction of any MOC order after 3:40 p.m., this requirement should allow the specialist to make a timely and reliable assessment, for every stock, of MOC order flow and its potential impact on the closing price. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission previously has determined that such a deadline strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies.¹²

The amended procedures for expiration days will require that, as soon as practicable after 3:40 p.m., BSE specialists disseminate substantial imbalances in the pilot stocks, in stocks being added to or dropped from an index, and in any other stock if approved by a Floor Official. In this regard, the BSE pilot program combines early submission of MOC orders with prompt dissemination of imbalances that reflect actual investor interest. As noted in prior Commission orders approving these procedures for pilot stocks,¹³ the BSE should have sufficient opportunity to attract any contra-side interest necessary to alleviate substantial MOC order imbalances in any stock and to dampen their effect on the closing price.

In addition, the BSE will require order handling procedures for non-expiration days that are substantially similar to those in place for expiration days. This will allow members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close on non-expiration days, certain trading

and asset allocation strategies could employ MOC orders. The 3:50 p.m. deadline for MOC order entry and cancellation, as well as the requirement to disseminate MOC orders consisting of 50,000 shares or more as soon as practicable after 3:50 p.m., on non-expiration days should help the specialist make a timely and reliable assessment of MOC order flow and its potential impact on the closing price and also should ensure that any imbalance publications reflect actual investor interest. In the Commission's opinion, a 3:50 p.m. deadline strikes a more appropriate balance for non-expiration days (as opposed to the 3:40 p.m. deadline for expiration days) given the reduced likelihood of substantial MOC order imbalances due to derivatives-related trading strategies.

The Commission finds it appropriate for the BSE to provide for procedures for the handling of MOC orders in market conditions when the NYSE's Rule 80A is in effect.¹⁴ The Commission believes that the procedures clearly inform market participants of the manner in which MOC order can be placed on the BSE when the NYSE's Rule 80A is in effect.

For the reasons discussed above, the Commission is approving the resumption of the pilot program, and Amendment No. 1, through October 31, 1997. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This will permit the proposed amendments to be effective simultaneously with the NYSE's amendments to the procedures for handling MOC orders.¹⁵ In addition, the procedures the BSE proposes to use are identical to NYSE procedures that were published in the Federal Register for the full comment period and were approved by the Commission.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2) ¹⁷ that the proposed rule change is hereby approved on a pilot basis through October 31, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹⁸

¹⁴ The Commission continues to believe that the provisions of NYSE Rule 80A provides a useful means of addressing market volatility. See Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963.

¹⁵ See Release No. 34-36404, *supra* note 9.

¹⁶ No comments were received in connection with the most recent proposed rule change which modified the NYSE procedures. See Release No. 34-36404, *supra* note 9.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37481; File No. SR-CHX-95-26]

**Self-Regulatory Organizations;
Chicago Stock Exchange,
Incorporated; Order Granting Approval
to Proposed Rule Change and Notice
of Filing and Order Granting
Accelerated Approval to Amendments
Nos. 1, 2, and 3 to Proposed Rule
Change Relating to Listing Standards**

July 25, 1996.

I. Introduction

On November 8, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") ¹ and Rule 19b-4 thereunder,² a proposed rule change to establish new quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36531 (Nov. 30, 1995), 60 FR 62918 (Dec. 7, 1995). No comments were received regarding the proposal.

On December 5, 1995, June 18, 1996, and June 23, 1996, respectively, the Exchange submitted to the Commission Amendment Nos. 1, 2, and 3 to the proposed rule change to make grammatical changes to the text of the rule and to clarify certain listing and maintenance requirements and corporate governance standards.³ This order approves the proposed rule change, including Amendment Nos. 1, 2, 3 on an accelerated basis.

II. Description of Proposal

This rule change includes original listing and maintenance criteria and

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Craig Long, Foley & Lardner, to Glen Barentine, Team Leader, Division of Market Regulation, SEC, dated December 4, 1995 ("Amendment No. 1"); Letter from Craig Long, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, SEC, dated June 17, 1996 ("Amendment No. 2"); Letter from Craig Long, Foley & Lardner, to Jennifer S. Choi, Division of Market Regulation, SEC, dated July 23, 1996 ("Amendment No. 3"). Amendment Nos. 1, 2, and 3 are described in more detail *infra* in the description of the proposal.

large MOC order imbalances on the regional exchange could contribute to overall market volatility.

¹¹ See Release No. 34-36404, *supra* note 9.

¹² See, e.g., Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295.

¹³ See 1994 Pilot Approval Order, *supra*, note 5.

establishes qualitative standards and corporate governance policies applicable to listed companies. Specifically, the rule change establishes a new two-tier listing structure whereby the Tier I listing standards, in general, will be quantitatively and qualitatively higher (*i.e.*, more restrictive and demanding) than Tier II listing standards. The current CHX listing standards, to a large extent, will constitute the listing requirements for new CHX Tier II listing, and CHX proposes new higher standards for the CHX Tier I listing.

Tier I includes standards for listing common stock, preferred stock and similar issues, bonds and debentures, stock warrants, contingent value rights, and other securities suited for auction market trading. Tier II includes listing standards for common stock, preferred stock, bonds and debentures, and warrants.

All securities, regardless of the requirements used for their admission to listing, will be subject to identical auction market trading rules. The Exchange, however, will identify and distinguish at all times which securities are listed pursuant to Tier I and Tier II standards. The Exchange will identify Tier I issues with a designation symbol annexed to its ticker symbol.

CHX listing standards for Tier I, either as regards to initial or maintenance listing, are not waivable. Moreover, all issuers listed under Tier I must satisfy the Tier I maintenance standards on a continuing basis. For Tier II, the Exchange may revise the Tier II requirements upward under certain circumstances, but an exception to Tier II requirements may be made only by vote of the Executive Committee of the Board of Governors.

1. Tier I Listing Standards

The Exchange's new listing standards for Tier I common stock are based on standards established in a Memorandum of Understanding ("MOU") between the North American Securities Administrators Association, Inc. ("NASAA")⁴ and the Philadelphia Stock Exchange ("Phlx")⁵ and between NASAA and the Pacific Stock Exchange.⁶ The standards in these MOUs were developed in an effort to provide issuers with securities listed on these exchanges a basis for obtaining an exemption from state securities registration requirements (*i.e.*, blue sky exemption). The MOUs created minimum quantitative initial inclusion and maintenance standards, corporate governance requirements, and minimum voting rights for listing on the respective exchange. The Exchange has adopted the MOUs' two alternative minimum quantitative initial inclusion standards for common stock, as follows:

Description	Alt. No. 1	Alt. No. 2
Net Worth	\$4,000,000	\$12,000,000.
Pre-Tax Income	750,000	
Net Income	400,000	
Public Float (Shares)	500,000	1,000,000.
Market Value of Float	3,000,000	15,000,000.
Minimum Bid	\$5/share *	\$3/share *
Public Beneficial Holders	800/400 **	400.
Operating History		3 years.

*The \$5/\$3 price must be the closing bid price for a majority of business days for the six-month period prior to the date of the application.⁷
 **800 shareholders are required for companies with at least 500,000 but less than 1 million shares publicly held, or 400 shareholders for companies with at least 1 million shares publicly held, or 500,000 shares publicly held and daily trading volume in excess of 2,000 shares per day for six months.

Initial public offerings must be underwritten on a "firm commitment" basis and must meet the CHX's listing standards within a 30-day grace period after completion of the offering, except that the initial public offering price will only be required to meet the price required at the time of application and not the six-month historical requirement.⁸

For preferred stock, the original listing criteria vary depending on where the issuer has its common stock listed. If the related common stock is listed on the Exchange, New York Stock Exchange ("NYSE"), or American Stock Exchange ("Amex"), there must be at least 100,000 preferred shares publicly held and an aggregate market value of at least \$2,000,000. If the related common stock is not so listed, there must be at least 400,000 preferred shares publicly

held, an aggregate market value of at least \$4,000,000, and at least 800 public beneficial holders of 100 shares or more. In either cases, the issuer must meet the net tangible assets and earnings requirements for common stock and must meet and appear able to service the dividend requirement for the preferred stock, and each share of preferred stock must have a minimum closing bid price of \$10 to be eligible for listing.

Moreover, the Exchange will not list convertible preferred issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Articles of Incorporation or any amendments thereof.⁹ If preferred stock is convertible into a class of common stock, such class must meet the Tier I listing

requirements for common stock. Current last sale information must also be available with respect to the underlying security into which the security is convertible.¹⁰

For listing of bonds and debentures under Tier I, issuers will be evaluated based on the same net tangible assets and earnings criteria applicable to common stock. If an issuer's common stock is listed on the Exchange, NYSE or Amex, the bonds or debentures must have a minimum aggregate market value and principal amount of \$5,000,000 each and at least 100 public beneficial holders. If the related common stock is not traded on any of the above referenced exchanges, the bonds or debentures must have an aggregate market value and principal amount of at least \$20,000,000 each and at least 100 public beneficial holders. In either case,

⁴ NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

⁵ The Memorandum of Understanding was approved by NASAA and Phlx on October 12, 1994.

⁶ The Memorandum of Understanding was approved by NASAA and PSE on October 12, 1994.

⁷ See Amendment No. 2, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ Redeemable preferred stock issues must provide for redemption pro rata or by lot. See Amendment No. 2, *supra* note 3.

issuers must meet and appear able to satisfy interest and principal when due on the bond or debenture to be listed.

Moreover, the Exchange will not list convertible debt issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Indenture Agreement.¹¹ If a debt security is convertible into a class of equity security, such equity security must meet the Tier I listing requirements. Current last sale information must also be available with respect to the underlying security into which the bond or debenture is convertible.¹²

To list municipal securities under Tier I, the aggregate market value and principal amount must be at least \$20,000,000 each, and there must be at least 100 public beneficial owners. The municipal security must also be rated as investment grade by at least one nationally recognized rating service. The Exchange intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with Municipal Securities Rulemaking Board ("MSRB") Rule G-3 regulations regarding municipal securities principals and representatives.¹³ All Exchange contracts in municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB.¹⁴

For a Tier I listing of stock warrants, there must be at least 500,000 stock warrants publicly held by not less than 250 public beneficial holders. The Exchange will not list stock warrants under the Tier I designation unless the common stock of the company or other security underlying the stock warrants is already listed (and meets the relevant maintenance requirements for continued listing) or will be listed concurrently with the stock warrants on the Exchange under the Tier I designation.

For the listing of Tier I contingent value rights ("CVRs"),¹⁵ issuers must

meet the net tangible assets and earnings requirements applicable to common stock. In addition, there must be at least 600,000 publicly held CVRs with a market value of at least \$18,000,000 and at least 400 public beneficial holders, the issuer must have total assets of at least \$100,000,000, and the CVRs must have a maturity of at least one year. In the alternative, the CVRs must have been approved for listing on another national securities exchange.¹⁶ Prior to the commencement of trading of CVRs, the Exchange will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.¹⁷

The Exchange will consider listing other securities not otherwise covered by the Tier I listing requirements provided the issue is suited for auction market trading. Prior to commencement of trading of such securities, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.¹⁸ Such securities must have at least 1,000,000 publicly held trading units and a principal amount/market value of at least \$20,000,000. The issue must also have at least 400 public beneficial holders or if the issue is traded in thousand dollar denominations, there must be a minimum of 100 public beneficial holders. In addition, the issuer must have total assets of at least \$100,000,000 and net worth of at least \$10,000,000. If the issuer is unable to satisfy the earnings requirements applicable to Tier I common stock, the Exchange will require the issuer to have total assets of at least \$200,000,000 and

the issuer of the CVRs ("related security"). At maturity, the holder of a CVR would be entitled to a cash payment at maturity if the market price of the related security is lower than a predetermined target price. If the market price of the related security equals or exceeds the target price, the holder of the CVR would not be entitled to receive such a cash payment. See Securities Exchange Act Release No. 33843 (Mar. 31, 1994), 59 FR 16666 (Apr. 7, 1994).

¹⁶ See Amendment No. 1, *supra* note 3. The Commission notes that if another exchange amends its listing standards for CVRs and lists securities pursuant to the amended standards, the Commission expects the CHX to make conforming changes.

¹⁷ See Amendment No. 2, *supra* note 3.

¹⁸ The Exchange has also represented to the Commission that before listing or trading a new product, the Exchange will review whether any Section 19(b) rule filings would be required pursuant to Rule 12f-5. See Amendment No. 2, *supra* note 3.

net worth of at least \$10,000,000, or total assets of at least \$100,000,000 and net worth of at least \$20,000,000.¹⁹

Moreover, the Tier I listing standards for these securities are not intended to accommodate the listing of securities that raise novel or significant regulatory issues and, therefore, the listing of such securities would require a separate rule filing submitted pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. In this regard, the Exchange represents that it will consult with the Commission on a case-by-case basis concerning the appropriateness of filing a proposed rule change concerning such new product.²⁰

2. Tier II Listing Standards

For issuers unable to satisfy the Tier I standards, the Exchange proposes Tier II standards to allow companies that may not be large enough to list under Tier I the opportunity to have their securities traded in an auction market, thereby increasing liquidity and issuer access to the investment community.

The numerical Tier II initial listing standards for common stock, preferred stock, bonds and debentures, and warrants are substantially similar to the current CHX standards applicable to all listed issues, except that index warrants and contingent value rights can no longer be listed under these standards. With respect to Tier II listing standards, the Exchange proposes to use the term "publicly held shares," in new Rule 18, consistent with new Rule 1(b)(v).²¹ The Exchange also is now requiring that listed companies have at least 500 public beneficial holders and that they demonstrate the ability to produce adequate annual earnings, without specifying a minimum annual amount.²²

In cases where a company's security does not qualify for inclusion under Tier I, yet the security is listed or has been approved for listing on the NYSE, Amex (except for "ECM" securities), or Nasdaq National Market System ("Nasdaq/NMS"), the Exchange may list such security under Tier II in reliance upon the listing requirements of the applicable exchange or association.²³

¹⁹ If the issue contains cash settlement provisions, settlement must be made in U.S. dollars, and if the issue contains redemption provisions, the redemption price must be at least \$3.00 per unit.

²⁰ See Amendment No. 3, *supra* note 3.

²¹ See Amendment No. 2, *supra* note 3.

²² *Id.*

²³ *Id.*

¹¹ *Id.*

¹² Redeemable issues must provide for redemption pro rata or by lot. See Amendment No. 2, *supra* note 3.

¹³ The National Association of Securities Dealers ("NASD") has authority to enforce MSRB rules for listed municipal securities. The CHX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

¹⁴ The Exchange has also represented that municipal securities traded on the Exchange will not be subject to off-Board trading restrictions. See Amendment No. 2, *supra* note 3.

¹⁵ CVRs are unsecured obligations providing for a possible cash payment at maturity based on the value of an equity security issued by an affiliate of

3. Corporate Governance and Disclosure Policies

Tier I

The Exchange proposes new corporate governance standards for Tier I securities. These provisions include rules concerning conflicts of interest, independent directors, audit committees, quorum, shareholder approval, annual meetings, and solicitation of proxies and consents. Moreover, these standards include specific requirements for disclosure of reports filed with federal regulatory bodies, specific requirements for shareholder approval for certain corporate actions, and specific voting rights provisions. These requirements are described in detail in the new rules.

With respect to voting rights, the new rule prohibits the listing or continued listing of any common stock or other equity security of a domestic issuer if the company issues any class of security or takes other corporate action with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock.²⁴ Moreover, to be eligible for listing, preferred stock must give the holders the right to elect at least two members of the issuer's Board of Directors no later than two years after a default in the payment of fixed dividends.²⁵

Tier II

The Exchange is proposing to apply its current corporate governance standards to Tier II securities. These include, among others, requirements for an audit committee, independent directors, and solicitation of proxies. The Exchange also proposes to impose new voting rights provisions on Tier II securities.²⁶ The new rule prohibits the voting rights of existing shareholders of publicly traded common stock from being disparately reduced or restricted through any corporate action or issuance.²⁷ Although this voting rights standard is similar to the standard applicable to Tier I securities, it provides the Exchange with useful

flexibility in evaluating transactions on a case-by-case basis.

Tier I and Tier II

The Exchange will apply the current public disclosure requirements to both Tier I and Tier II issues.²⁸

4. Maintenance Requirements

Tier I

The quantitative maintenance standards for Tier I common stock are as follows: (1) at least 200,000 publicly held shares and a market value of at least \$1,000,000; (2) at least 400 public beneficial holders, or at least 300 beneficial holders of 100 shares or more; and (3) net worth of at least \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years, or \$4,000,000 if losses in three of the last four years.

The preferred stock maintenance standards require for Tier I securities the same net worth standards as common stock, at least 100,000 publicly held shares with a market value of at least \$1,000,000, and at least 150 public beneficial holders. In addition, the issuer must not have sustained losses from continuing operations and/or net losses in the five most recent fiscal years. If preferred stock is convertible into a class of common stock, such class must meet the applicable Tier I maintenance requirements.²⁹

Tier I bonds and debentures must maintain the same net worth maintenance standards as common stock, an aggregate market value and principal amount of at least \$1,000,000 each, and at least 100 public beneficial holders. In addition, for Tier I debt, the issuer must not have sustained losses from continuing operations and/or net losses in the five most recent fiscal years. For debt securities of non-listed issuers, the security must be rated as investment grade by at least one nationally recognized rating service. If a debt security is convertible into a class of equity security, such class must meet the applicable Tier I maintenance requirements.³⁰

In the case of Tier I stock warrants, the common stock of the company or other security underlying the stock warrant must meet the applicable Tier I maintenance requirements. Finally, Tier

I CVRs must maintain an aggregate market value of at least \$1,000,000. If the security to which the CVR is tied is delisted, trading in the CVR will be suspended and proceedings initiated to delist the CVRs.³¹

Securities listed under the Tier I designation will not be granted waivers from the Exchange's maintenance requirements. For any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, the Exchange will initiate a proceeding to redesignate it as a Tier II security.

Tier II

The Exchange proposes to apply the current maintenance standards for all securities listed on the Exchange to Tier II securities. If a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the CHX will recognize that security as a Tier I issue.

The Exchange does not propose to materially change its delisting procedures.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6.³² The Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to *bona fide* companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and

²⁴ This voting rights standard is modelled after former Commission Rule 19c-4, which is no longer in effect. The model MOU continues to utilize the Rule 19c-4 voting rights standard.

²⁵ In addition, any change in the rights, privileges or preferences of preferred stock holders requires at least a two-thirds vote of the preferred class, voting as a class. The creation of any additional class of preferred stock senior to or equal in preference to the issue to be listed requires at least a favorable majority vote of the preferred class, voting as a class.

²⁶ See Amendment No. 2, *supra* note 3.

²⁷ *Id.* This standard is almost identical to the voting rights standard of the NYSE and Amex.

²⁸ *Id.*

²⁹ Current last sale information must be available with respect to the underlying security into which the security is convertible. See Amendment No. 2, *supra* note 3.

³⁰ Current last sale information must be available with respect to the underlying security into which the security is convertible. See Amendment No. 2, *supra* note 3.

³¹ *Id.*

³² 15 U.S.C. § 78F.

liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the Exchange with greater flexibility in determining which securities warrant inclusion on the Exchange, without compromising the benefits that the Exchange's listing standards offer to investors.

The Commission notes that most of the Exchange's new listing standards are substantially similar to the rules of existing national securities exchanges and the Nasdaq National Market and, therefore, finds that these standards are equally acceptable for the Exchange. To the extent that the Exchange's proposed rules do differ from those of existing national securities exchanges and the Nasdaq National Market, the Commission finds them also to be consistent with the Act.

In addition to the quantitative standards, the other qualitative requirements, such as the establishment of audit committees, voting rights, shareholder approval, and disclosure policies, ensure that companies trading on the Exchange will adequately protect the interests of public shareholders. The Commission also notes that because extensive listing and maintenance standards are being adopted, only companies suitable for exchange listing are eligible for trading on the Exchange. Further, as noted above, for Tier I securities the listing and maintenance criteria are not waivable. This will ensure that the minimum requirements necessary to ensure adequate depth and liquidity to support exchange trading will be met.³³

Moreover, with respect to the CHX's proposal to list other securities, the Commission believes that the proposed rule change is consistent with the Act because it relates only to those securities that are similar to products currently listed for trading by the Exchange. If a new product raises novel or significant regulatory issues, the Exchange must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.³⁴

With respect to CVRs, the CHX's proposed standards are identical to those of the other securities exchanges. Moreover, the Exchange has represented that it will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. The Commission believes that this should help ensure that only customers with an understanding of the risks attendant to the trading of CVRs trade these securities on their brokers' recommendations.

Finally, the Commission believes that inclusion of a security for listing on an exchange should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.³⁵ The Commission believes that this rule provides the necessary flexibility to determine whether to list an issuer, while ensuring that certain minimum standards must be met. Thus, the Commission believes that the new listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. The new standards will provide important guidance to the Exchange review process, and will alert issuers seeking listing on the Exchange, as well as current Exchange issuers, of the Exchange's specific standards.

Moreover, the Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. These amendments made clarifying changes to the rule proposal and strengthened the listing requirements under the proposal. Moreover, the Commission did not receive any comments on the original proposal,³⁶ which was noticed for the full statutory period, nor did it receive comments on a similar PSE proposal that was also noticed for the full statutory period.³⁷ Based on the above, the Commission

finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment Nos. 1, 2, and 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-95-26 and should be submitted by August 22, 1996.

V. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it. The rule change provides enhanced listing standards for Exchange listed securities which provide greater protection for investors and the public interest.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-CHX-95-26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,
Deputy Secretary.

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³³ The Commission notes that for Tier II securities, the Exchange may revise the requirements upward under certain circumstances, but only the Executive Committee of the Board of Governors may make an exception to the requirements. The Commission expects the Exchange to treat these standards generally as minimum requirements. To the extent the CHX Executive Committee has authority to permit lower standards, the Commission believes this should only be permitted in the rarest of circumstances and only when the CHX is assured an adequate market in the security can continue to be made and continued listing is supported in the public interest.

³⁴ See Amendment No. 3, *supra* note 3.

³⁵ See, e.g., *In the Matter of Silver Shield Mining and Milling Company*, Securities Exchange Act Release No. 6214 (Mar. 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); *In the Matter of Consolidated Virginia Mining Co.*, Securities Exchange Act Release No. 6192 (Feb. 26, 1960) (same).

³⁶ See Securities Exchange Act Release No. 36531 (Nov. 30, 1995), 60 FR 62918 (Dec. 7, 1995).

³⁷ See Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (Aug. 1, 1994) (approval of PSE's two-tier listing structure).

³⁸ 15 U.S.C. § 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).