provided that the purchaser of the electricity is not an affiliated public-utility; or (5) an ETC, an ''energy-related'' company under rule 58 or any other Nonutility Subsidiary that (i) is partially owned, *provided that* the ultimate purchaser of goods or services is not a Utility Subsidiary, (ii) is engaged solely in the business of developing, owning, operating, and/or providing services or goods to Nonutility Subsidiaries described in (1) through (4) above, or (iii) does not derive, directly or indirectly, any part of its income from sources within the U.S. and is not a public-utility company operating within the U.S.

4. Request for Exemption for Existing Affiliate Arrangements

Black Hills requests a determination that the Subsidiaries may continue to engage in certain affiliate transactions under rule 87(a)(3) or otherwise. Black Hills also seeks approval for Black Hills Power and affiliated EWGs to provide services (such as engineering and technical support functions, fuel procurement, information systems, maintenance, quality assurance, management services and support and safety review) at cost as defined in rules 90 and 91, to each other.

VI. Retention

Black Hills is engaged in various nonutility businesses through Subsidiaries and through affiliated business ventures, including the following: (1) EWGs and QFs, (2) investments in energy-related businesses involving exploration and production, transmission and distribution and cogeneration, among other things; and (3) telecommunications activities. Applicants also request that they be permitted to retain existing Financing Subsidiaries, Black Hills Nevada Real Estate Holdings LLC, Black Hills Valmont Colorado Inc., E-Next A Equipment Leasing Company LLC, and Las Vegas Cogeneration Energy Financing Company LLC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–24738 Filed 11–4–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50618/File No. S7–12–01]

Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks From the Definition of ''Broker'' Under Section 3(a)(4) of the Securities Exchange Act of 1934

November 1, 2004.

I. Background

The Gramm-Leach-Bliley Act (''GLBA'') repealed the blanket exception of banks from the definitions of ''broker'' and ''dealer'' under the Securities Exchange Act of 1934 (''Exchange Act'') [1] and replaced this full exception with functional exceptions incorporated in amended definitions of ''broker'' and ''dealer.'' Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definitions of ''broker'' and ''dealer.''

The GLBA provided that the amended definitions of ''broker'' and ''dealer'' were to become effective May 12, 2001. On May 11, 2001, the Securities and Exchange Commission (''Commission'') issued interim final rules (''Interim Rules'') to define certain terms used in, and grant additional exemptions from, the amended definitions of ''broker'' and ''dealer.'' [2] Among other things, the Interim Rules extended the exceptions and exemptions granted to banks under the statute and Interim Rules to savings associations and savings banks. They also included a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.[3] To further accommodate the banking industry's continuing compliance concerns, the Commission delayed the effective date of the bank ''broker'' and ''dealer'' rules through a series of orders that ultimately extended the temporary exemption from the definition of ''broker'' to November 12, 2004, and from the definition of ''dealer'' to September 30, 2003.[4]

In June 2004, the Commission proposed Regulation B, which would revise and replace the Interim Rules.[5] The comment period for Regulation B expired on September 1, 2004,[6] and the Commission has received over 105 comments, including comments from the banking industry, banking regulators, and members of Congress.

In the Interim Rules, the Commission adopted Exchange Act Rule 15a–7,[7] which provided that banks must begin complying with the GLBA on January 1, 2002. We proposed to amend this provision in Regulation B by providing banks and other financial institutions until January 1, 2006, to begin complying with the GLBA.[8]

II. Extension of Temporary Exemption From Definition of ''Broker''

The Commission is carefully considering comments to determine what final action should be taken with regard to the Regulation B proposal. The Commission anticipates that this review process will not be completed before the exemption from the Interim Rules relating to the definition of ''broker'' expires on November 12, 2004.

Therefore, the Commission finds that extending the temporary exemption of banks, savings associations, and savings banks from the definition of ''broker'' is necessary and appropriate in the public interest, and is consistent with the protection of investors. The Commission believes that extending the exemption from the definition of ''broker'' until March 31, 2005, will prevent banks and other financial institutions from unnecessarily incurring costs to comply with the statutory scheme based on the current Interim Rules and will give the Commission time to fully consider comments received on Regulation B and

[1] As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

[2] *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

[3] 17 CFR 240.15a–7.

[4] *See* Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); and Exchange Act Release No. 46745 (October 30, 2002); Exchange Act Release No. 47649 (April 8, 2003) (extending the exemption from the definition of ''broker'' until November 12, 2004); Exchange Act Release No. 47366 (February 13, 2003) (extending exemption from the definition of ''dealer'' until September 30, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions (''Dealer Release'') Exchange Act Release No. 47364 (February 13, 2003), 68 FR 8686 (February 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of ''broker''.

[5] Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004)

[6] *See* Exchange Act Release No. 50056 (July 22, 2004) 69 FR 44988 (July 28, 2004) (extending comment period on Regulation B until September 1, 2004).

[7] 17 CFR 240.15a–7.

[8] In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a–7 and proposed a compliance date of January 1, 2006. *See* 17 CFR 242.781.

take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,[9]

It Is Hereby Ordered that banks, savings associations, and savings banks are exempt from the definition of the term ''broker'' under the Exchange Act until March 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3031 Filed 11–4–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50616; File No. SR–CHX–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Modify Certain Charges that are Payable by CHX Specialists That Trade NASDAQ/NM Securities

November 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on September 27, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CHX proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM securities. The text of the proposed rule change is available at the Office of the Secretary, the Commission and the CHX.

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 change and discussed any comments it received regarding the proposed rule change. 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 Change

1. Purpose

The CHX proposes to amend its Fee Schedule to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM (''Over-the-Counter'' or ''OTC'') securities. Specifically, the changes to the Fee Schedule would (a) modify the formula for calculating the monthly fixed fee that is payable by OTC specialists; (b) establish a flat monthly CUSIP fee of $2,000 per OTC specialist firm, regardless of the number of issues traded; and (c) eliminate application and assignment fees for OTC issues that are assigned without competition.

Fixed fees. The current monthly fixed fee payable by specialists trading OTC securities is calculated for each firm by subtracting, from the fixed fee charged to the firm in December 2003, a firm's pro rata share of a specific dollar amount. Additional reductions of the fixed fee are available to firms that meet specific share volume targets.

Under the proposed new fee calculation, the CHX would increase the basic amount paid by its OTC specialist firms to help the CHX better cover its costs of supporting the OTC specialist program, but would provide incentives, through fixed fee reductions, to specialist firms that trade additional Nasdaq/NM securities and thus increase the number of issues traded on the CHX. Specifically, the CHX would calculate the basic fixed fee by charging OTC specialist firms the greater of $20,000 or each firm's pro rata share of $60,000. A firm's pro rata share would be based on the number of firms trading OTC securities in a particular month.[3] The CHX would also automatically increase the basic monthly fixed fee by $.0024 per share for all MAX-executed shares above 20 million shares, up to $30,000 per firm, to recognize the fact that the CHX's costs of supporting the OTC specialist program would increase with substantial increases in its specialists' trading volume. As a final component of its fixed fee proposal, however, the CHX would reduce the fixed fee by $100 for each additional Nasdaq/NM issue assigned to an OTC specialist firm, subject to a maximum monthly reduction of $10,000 per firm. As noted above, this fee reduction provides an incentive to OTC specialist firms to trade additional Nasdaq/NM securities.

CUSIP, application and assignment fees. As noted above, the CHX also proposes to replace its current per-issue CUSIP fee with a flat fee and to eliminate the application and assignment fees that otherwise would be assessed when Nasdaq/NM issues are assigned without competition.[4] These two proposals—like the proposed modification in the fixed fee—are designed to encourage specialist firms to trade additional Nasdaq/NM securities by allowing them to do so without absorbing additional costs.[5]

The CHX believes that these changes to the Fee Schedule represent a fair allocation of the costs associated with the OTC specialist program.[6] As noted above, the changes are also intended to provide OTC specialists with an appropriate incentive to increase the number of OTC issues traded by an OTC specialist (consistent with the OTC specialist's duties as a specialist), which could allow the CHX's members to offer their customers access to a wider array of specialist-traded OTC securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and

[9] 15 U.S.C. 78mm.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if two specialist firms were trading OTC securities, each firm would pay $30,000. If three specialist firms were trading OTC securities, each firm would pay $20,000.

[4] The CHX would continue to charge specialist assignment fees with respect to securities that are assigned to a specialist firm in competition with other firms, reflecting the increased administrative costs associated with allocating stocks in competition.

[5] The proposed elimination of the application and assignment fees would reduce fees for any OTC specialist firm that seeks to trade additional securities. The proposed changes to the CUSIP fee would reduce the CUSIP fees currently charged to two of the CHX's OTC specialist firms and would increase, slightly, the CUSIP fees currently charged one of the CHX's OTC specialist firms.

[6] At a basic level, many of the CHX's costs of supporting the OTC specialist program do not vary based on the number of OTC specialist firms or the number of issues traded. These costs, however, can increase with substantial increases in trading volume. The CHX's proposed changes to the fixed fee are consistent with these principles.

[7] 15 U.S.C. 78(f)(b)(4).