

remove the security from listing and/or registration. The Commission notes that the proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

B. Issuer Voluntary Delisting

In the case of an issuer-initiated delisting, Amex is proposing revisions to Amex Rule 18 and section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

- (i) Comply with the Exchange's rules for delisting and applicable state laws;
- (ii) Submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the Exchange will be provided at least 20 days before the delisting becomes effective); and
- (iii) Issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site, contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is effective.

The Commission believes that the amendments will fully inform issuers of the requirements for voluntary delisting of their securities under Amex rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing. This requirement will allow the Exchange to be fully informed of the actual filing of a Form 25 and prepare to take timely action in accordance with the filing of the Form.

In addition, Amex has proposed a new requirement that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist and that the issuer provide the Exchange with a certified copy of the relevant board resolution. The Commission believes that these requirements may help ensure that the decision to delist a security voluntarily has been well-considered by the issuer's board.

Amex also proposes that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has

received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii) and; (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii). The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

The Commission notes that Amex represents that it will, as required by the revised Commission rules, post notice of issuer-initiated delistings on its Web site beginning on the business day following receipt of notice from the issuer, and it will keep the notice posted until the delisting becomes effective. The Commission also notes that, as in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-Amex-2005-107), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53665; File No. SR-CBOE-2005-87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 To Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

April 17, 2006.

I. Introduction

On October 21, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On December 14, 2005, CBOE filed Amendment No. 1 to the proposed rule change.³ On February 24, 2006, CBOE filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2006.⁵ No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Section 12 of the Act⁶ and SEC Rule 12d2-2 govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 ("amended SEC Rule 12d2-2") and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ In Amendment No. 2, CBOE amended CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.

⁵ See Securities Exchange Act Release No. 53399 (March 2, 2006), 71 FR 12749.

⁶ 15 U.S.C. 78l.

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).

other Commission rules require the electronic filing of revised Form 25⁷ on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.⁸

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

CBOE Chapter 31 sets forth the Exchange's non-option securities listing rules. The Exchange proposes to revise CBOE Rule 31.94(G) to incorporate the new requirements set forth in amended SEC Rule 12d2-2(b). The provisions set forth in current CBOE Rule 31.94(G), which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2-2(b), except for the requirement in amended SEC Rule 12d2-2(b)(iii) that requires national securities exchanges to provide public notice of determinations to delist an issuer's securities. Therefore, proposed CBOE Rule 31.94(G)(h) would require the Exchange to provide public notice, in accordance with SEC Rule 12d2-2(b)(iii), of a final determination by the Exchange to strike an issuer's securities from listing and/or withdraw the registration of such securities on the Exchange in all cases other than as provided pursuant to amended SEC Rule 12d2-2(a).

The Exchange also proposes to make clear in proposed Rule 31.94(G) that the issuer is required to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a public notice of such determination. These proposed changes reflect the requirements set forth in amended SEC Rule 12d2-2(c). The proposed rule filing sets forth a requirement in addition to those set forth in amended SEC Rule 12d2-2(c) that would require the issuer to notify the Exchange that it has filed Form 25⁹ with the SEC contemporaneously with such filing.

In addition, CBOE proposes to amend CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in amended SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.¹⁰

Lastly, the Exchange is proposing to make housekeeping changes that relate to references to the Act and certain rules in the Act. The proposed changes, other than the housekeeping changes, will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

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 exchange¹¹ and, in particular, the requirements of section 6 of the Act.¹² Specifically, as discussed below, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,¹³ which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information

with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, as noted in more detail below, the changes being adopted by CBOE meet the requirements of amended SEC Rule 12d2-2.

A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that CBOE's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

CBOE rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.¹⁴ Specifically, issuers may appeal staff delisting determinations to an Exchange committee which may be either a standing committee or a committee specially appointed for the purpose and may consist of directors, Exchange officials, members, and/or other persons (not having an interest in the matter) as the Board of Directors shall determine.¹⁵ In addition, the Board may in its discretion authorize the Executive Committee to consider any or all appeals, and in such case the decision of the Executive Committee with respect thereto shall be final and conclusive.¹⁶ Finally, the proposed rule change will provide for public notice of the exchange's final determination to remove the security from listing and/or registration.

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements of amended SEC Rule 12d2-2(c) regarding issuer voluntary delisting. For example, the Exchange proposes to clarify in proposed Rule 31.94(G) that the issuer is required to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a

⁹ 17 CFR 249.25.

¹⁰ See Amendment No. 2, *supra* note 4.

¹¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See CBOE Rule 31.94(G)(a)-(g).

¹⁵ See CBOE Rule 31.94(G)(d).

¹⁶ See CBOE Rule 31.94(G)(g).

⁷ 17 CFR 249.25.

⁸ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

public notice of such determination. The Commission believes that the proposal will better inform issuers of the requirements for voluntary delisting of their securities under CBOE rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to notify the Exchange that it has filed Form 25 with the Commission contemporaneously with such filing. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and prepared to take timely action in accordance with the filing of the Form.

In addition, CBOE proposes to amend CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2-2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.¹⁷ The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-CBOE-2005-87), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53664; File No. SR-CHX-2006-03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Prohibition of Trade Shredding

April 17, 2006.

I. Introduction

On January 24, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("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 relating to trade shredding. The proposed rule change was published for comment in the **Federal Register** on March 16, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend its rules to prohibit its participants from breaking customer orders into smaller multiple orders for the primary purpose of maximizing rebates or other payments to the participant without regard for the customer's interest.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁴ particularly Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁵ The Commission

believes that the proposed rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-CHX-2006-03), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53671; File Nos. SR-FICC-2006-03 and SR-NSCC-2006-03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation and National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes To Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement To Excess Regulatory Capital Ratio

April 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 22, 2006, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which items have been primarily prepared by FICC and NSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

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

FICC and NSCC are seeking to institute a clearing fund premium on their members based on a member's clearing fund requirement to excess regulatory capital ratio.

¹ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

³ See Securities Exchange Act Release No. 53441 (March 8, 2006), 71 FR 13642.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

¹⁷ See Amendment No. 2, *supra* note 4.

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(12).