

two years has not been applied to a market-maker client of a clearing firm. Due to hand-held trade input terminals and general improvements in trade submission systems, it is nearly impossible for a clearing firm to fall below the deficient clearing firm level of fifty-five percent. Therefore, Exchange Rule 2.30(f)(1) has become obsolete and the Exchange proposes to delete it.

## 2. Statutory Basis

The Exchange proposes to reduce the amount of time in which trades are submitted, resulting in an improved trade comparison process, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Act.<sup>11</sup>

## B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in the Commission's Public Reference Room in Washington, D.C. 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-CBOE-98-47 and should be submitted by December 30, 1998.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission believes that the proposal is consistent with the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires an exchange to have rules designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and, in general, to protect investors and the public interest.<sup>14</sup> In particular, the Commission believes that the proposed rule change should encourage members to make timely submissions of trade information by reducing the maximum permitted time to submit trade information from two hours to one hour. As a result, the clearing of options transactions should become more efficient, with a reduction in the number of unmatched trades and quicker resolution of out-trades. The Exchange should also be able to monitor its members more effectively for any problems that might disrupt the clearance and settlement process. The Commission also believes that applying CBOE Rule 2.30 to all members and not just market-makers trading in-person should provide for greater integrity of the trade matching and clearing process. The Commission also believes that it is consistent with the Act to delete obsolete provisions of CBOE Rule 2.30.

The Commission also finds the proposed rule change regarding the assessment of a single fee if a delay is caused by a nominee-employee member of a clearing member is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which states that the Exchange may provide for the equitable allocation of reasonable dues, fees, and other charges among its members. Under CBOE Rule 2.30, the timely submission of each individual member and clearing member is measured separately and a fee imposed only if the individual member or clearing member fails to submit at least eighty percent of its trades in a timely manner. Where a nominee-employee of a clearing member is acting on behalf of the clearing member and where the clearing member is ultimately responsible for the nominee-employee, the Commission believes that the

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

proposed rule change equitably allocates the cost of incorporating late trade information by only imposing a single fee on clearing members.

The Exchange has requested that the Commission approve the proposal prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register**. Because the Commission believes the proposal should expedite the clearing process, the Commission finds good cause for approving the proposed rule change (SR-CBOE-98-47) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.<sup>16</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-32606 Filed 12-8-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40730; File No. SR-CHX-98-26]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Listing Standards for Equity Linked Debt Securities

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed an amendment to the

<sup>16</sup> An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE-98-09. The proposed rule change, as amended, was noticed in the **Federal Register** on April 30, 1998. See Release No. 39910, *supra* note 3. The Commission received no comments on the proposed rule change. Subsequently, the Exchange withdrew its proposed rule change. See Withdrawal Letter, *supra* note 3.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposed rule change on November 4, 1998.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and simultaneously approving the proposed rule change.

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

The Exchange proposes to add a new Rule 26 to Article XXVIII of the Exchange's rules to adopt listing standards for Equity Linked Debt Securities ("ELDS"). The text of the proposed rule change follows. The text of the new rule is *italicized*.

### **ARTICLE XXVIII**

#### *Equity-Linked Debt Securities*

*RULE 26. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, equity-linked debt securities ("ELDS") that meet the criteria of this rule. ELDS are limited term non-convertible debt obligations of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.*

#### *(a) ELDS Issuer Listing Standards*

*(1) If the ELDS issuer is a company listed on the Exchange, it must be a company in good standing (i.e., meet the Exchange's Tier I or Tier II general listing criteria). If the ELDS issuer is an affiliate of a company listed on the Exchange, the company listed on the Exchange must be a company in good standing. If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's Tier I or Tier II Listing Rules. (Sovereign issuers will be evaluated on a case-by-case basis.)*

*(2) The ELDS issuer must, in all cases, have either*

*(i) A minimum tangible net worth of \$250 million; or*

*(ii) A minimum tangible net worth of \$150 million and the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or otherwise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.*

*(b) ELDS Listing Standards. The issue must have:*

*(1) At least 1 million ELDS outstanding.*

*(2) At least 400 holders.*

*(3) An aggregate market value of at least \$4 million.*

*(4) A term of two to seven years, provided that if the issuer is a non-U.S. company, the issue may not have a term of more than three years.*

*(c) Linked Equity Listing Standards. An equity security on which the value of the debt is based must:*

*(1) Have either:*

*(i) A market capitalization of at least \$3 billion and a trading volume of at least 2.5 million shares in the one-year period preceding the listing of the ELDS; or*

*(ii) A market capitalization of at least \$1.5 billion and a trading volume of at least 10 million shares in the one-year period preceding the listing of the ELDS; or*

*(iii) A market capitalization of at least \$500 million and trading volume of at least 15 million shares in the one-year period preceding the listing of the ELDS.*

*(2) Be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934, as amended, and be listed on a national securities exchange or traded through the facilities of a national securities association and be subject to last sale reporting.*

*(3) Be issued either by:*

*(i) A U.S. company; or*

*(ii) A non-U.S. company (including a company that is traded in the United States through American Depositary Receipts ("ADRs")) if there are at least 2,000 holders of the security, and either*

*(A) The Exchange, or, if the ELDS is to be traded pursuant to unlisted trading privileges, any other national securities exchange that is the primary U.S. market for such security, has in place with the primary exchange in the country where the security is primarily traded (or, in the case of a sponsored ADR, the primary exchange in the home country where the security underlying the ADR is primarily traded) an effective comprehensive surveillance information sharing agreement.*

*(B) The "Relative U.S. Volume" is at least 50 percent (for purposes of this subsection, the term "Relative U.S. Volume" shall mean the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange) or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the*

*Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities, or*

*(C) During the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the following trading volume standards were met:*

*(i) The combined trading volume of the security (including the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other classes of stock related to the underlying security) in the United States is at least 20 percent of the combined world-wide trading volume in the security and in related securities.*

*(ii) The average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market is 100,000 or more shares, and*

*(iii) The trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) is at least 60,000 per day in the U.S. market on a majority of the trading days during the six-month period.*

*(d) Limits on Number of ELDS. The issuance of ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of ELDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (1) two percent of the total worldwide outstanding shares of such security if at least 20 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (2) three percent of the total worldwide outstanding shares of such security if at least 50 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (3) five percent of the total worldwide outstanding shares of such security if at least 70 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing on the Exchange (for ELDS that are listed on the Exchange) or listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the Exchange pursuant to unlisted trading privileges) occurs in the U.S. market.*

<sup>3</sup> Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1998 ("Amendment No. 1"). Amendment No. 1 clarified the Additional Requirements for Non-U.S. Companies section of the proposed rule change so that it accurately reflected the rule language.

If an issuer proposed to issue ELDS that relate to more than the allowable percentages of the underlying security specified in this subsection (d), then the Exchange, in consultation with the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of ELDS that may be issued on a case-by-case basis.

*... Interpretation and Policy*

.01 Form of Circular to Membership  
Prior to the commencement of trading of any new ELDS on the Exchange, the Exchange will issue a circular, substantially in the form set forth below: Equity-Based Debt Security Membership Circular

Date:

Circular to Membership

Equity-linked debt securities ("ELDS") of \_\_\_\_\_ Corporation have been approved for Exchange [listing or trading pursuant to unlisted trading privileges] and will commence trading on [date]. The ELDS are debt securities where the amount payable at maturity is based on the then-current price of [the linked security].

—The ELDS will trade with the ticker symbol \_\_\_\_\_.

ELDS are securities that have certain unique characteristics, and investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, including:

- At maturity, holders of ELDS will receive [description of payment].
- Because the amount of principal returned when ELDS mature depends on the price of [the linked security], the possibility exists that an ELDS holder may lose some or all of the principal amount of his ELDS investment.
- ELDS will trade on the Equity Floor. ELDS will trade "Flat" (that is, without the payment of accrued interest) and in round lots of 100.
- ELDS are solely the obligation of [the issuer]. Holders of ELDS may look only to [the issuer] for payments of interest and principal, and not to [the issuer of the linked security].
- Both [the issuer and the issuer of the linked security] are listed on [insert appropriate markets] and are subject to the continuous reporting obligations of the Securities Exchange Act of 1934, as amended (the "1934 Act"). Interested persons may obtain copies of reports, proxy statements and other materials filed by [the two issuers] pursuant to the 1934 Act at the offices of the Securities and Exchange Commission.

Before a member, member organization, or person associated with

such member organization undertakes to recommend a transaction in the ELDS, such member or member organization should make a determination that such ELDS are suitable for such customer and the person making the recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

Any questions regarding the suitability of customer accounts should be directed to \_\_\_\_\_ at (312) 663-\_\_\_\_\_. Inquiries with respect to the ELDS themselves should be directed to \_\_\_\_\_ at (312) 663-\_\_\_\_\_.

## 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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 is proposing listing criteria to allow the Exchange to list hybrid debt securities and to trade hybrid debt securities pursuant to unlisted trading privileges. The Exchange refers to such debt securities as "Equity Linked Debt Securities" or "ELDS." ELDS are the non-convertible debt of the issuing company where the value of the debt is based, at least in part, on the value of another company's common stock or other individual equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments. In addition, ELDS may or may not have a ceiling and/or floor on the amount of principal that may be returned at maturity of the instrument.

The Exchange believes that the proposed ELDS listing criteria are

generally consistent with the "Other Securities" criteria currently found in Article XXVIII, Rule 13 of the CHX Rules and the Equity Linked Notes ("ELNs") listing criteria used by the American Stock Exchange, Inc. ("Amex"). The Exchange based its proposed rules on the ELDS listing criteria currently used by the New York Stock Exchange, Inc. ("NYSE").<sup>4</sup>

### General ELDS Listing Requirements

The issuer of an ELDS proposed for listing on the Exchange must meet certain requirements. The issuer of the ELDS must either (a) meet general CHX listing standards; or, (b) be in good standing, if listed on the Exchange; or, (c) be an affiliate of a company listed on the Exchange whose listing status is in good standing.<sup>5</sup>

The ELDS issue itself is subject to a variety of listing requirements as well. The issue must: (1) consist of a least one million ELDS, (2) have at least 400 holders, (3) have an aggregate market value of at least \$4 million, and (4) have a term of two to seven years (if the issuer is a non-U.S. company, the issue may not have a term of more than three years).

The proposal also includes criteria governing the equity security on which the value of the ELDS is based, several other miscellaneous requirements also imposed to ensure quality, and some further restrictions on ELDS whose underlying security is issued by a non-U.S. company. Specifically, with regard to value: (i) the issuer of each such security must be a reporting company with minimum market capitalizations and trading volumes, and (ii) each such security must be either listed on a national securities exchange or traded through the facility of a national securities association and be subject to last sale reporting.

The remaining quality assurance requirements ensure that: (a) the issuance of ELDS relating to any underlying U.S. security does not to

<sup>4</sup> The only difference between the proposed rule change and the NYSE ELDS rules is that the rules proposed by CHX provide for unlisted trading privileges. Telephone call between Patricia L. Levy, Senior Vice President and General Counsel, CHX, and Kelly A. McCormick, Attorney, Division of Market Regulation, SEC, on November 30, 1998.

<sup>5</sup> If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's tier I or Tier II Listing Rules. In addition, the ELDS issuer must either have a minimum tangible net worth of \$250 million or \$150 million. If the ELDS issuer uses the \$150 million standard, the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or other wise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

exceed five percent of the total outstanding shares of the underlying security; and (b) the issuance of ELDS relating to any underlying non-U.S. security or sponsored American Depositary Receipt ("ADR") does not exceed either two, three or five percent of the total worldwide outstanding shares of such security, depending on the amount of the worldwide trading volume in the security and related securities that occurs in the U.S. market during the six-month period preceding the date of (i) listing on the Exchange (for ELDS that are listed on the Exchange) or (ii) listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges).

#### *Additional Requirements for Non-U.S. Companies*

Finally there are some additional requirements when the underlying security is a non-U.S. company (including a company that is traded in the United States through ADRs). First, there must be at least 2,000 holders of the security. In addition, one of the following three alternatives must apply: (1) the Exchange must have an effective comprehensive surveillance information sharing agreement with either (a) the primary exchange in the country where the security is primarily traded (for listed ELDS),<sup>6</sup> or, (b) the national securities exchange that is the primary U.S. market for such security (for ELDS traded pursuant to unlisted trading privileges); or (2) the Relative Trading Volume must be at least 50%;<sup>7</sup> or (3) during the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the underlying company must meet various trading volume standards. The trading volume standards require that (1) the combined trading volume of the security in the United States be at least 20 percent of the combined world-wide

trading volume in the security and in related securities;<sup>8</sup> (2) the average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market be 100,000 or more shares; and (3) the trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) be at least 60,000 shares per day in the U.S. market on a majority of the trading days during the six-month period.

#### *Trading Issues*

The Exchange will generally treat ELDS as equity securities. Thus, for example, ELDS will be subject to equity margin treatment.

In addition, due to the unique nature of ELDS, prior to the commencement of trading of each new ELDS, the Exchange will distribute a circular to its members and member organizations alerting them to be unique characteristics of ELDS and providing guidance regarding their compliance responsibilities with respect to such securities. A form of this circular is set out in Interpretation and Policy .01 to Rule 26 of Article XXVIII.

#### *2. Statutory Basis*

The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that it is designed to promote just and equitable principles of trade, 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.

#### *B. Self-Regulatory Organization's Statement on 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 on the Proposed Rule Change Received From Members, Participating or Others*

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

#### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-98-26 and should be submitted by December 30, 1998.

#### **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission has reviewed the CHX's proposed rule change<sup>10</sup> and believes for reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5)<sup>12</sup> because the rule is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that ELDS provide a new and innovative means of participating in the securities markets. In particular, the Commission believes that the increased availability of ELDS will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.<sup>13</sup>

ELDS are not leveraged instruments, however, their price will still be derived from and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale

<sup>6</sup> In the case of a sponsored ADR, the agreement must be the primary exchange in the home country where the security underlying the ADR is primarily traded.

<sup>7</sup> Relative Trading Volume is defined as the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange), or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities.

<sup>8</sup> The securities considered in this regard include the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other class of stock related to the underlying security.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

of an ELDS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the Amex's ELNs<sup>14</sup> proposal<sup>15</sup> and the NYSE's ELDS proposal,<sup>16</sup> the Commission had several specific concerns with this type of product (*i.e.*, (1) investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security).<sup>17</sup> The Commission concluded, however, that the Amex and NYSE proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.<sup>18</sup> Similarly, in this proposal, the CHX has proposed safeguards that address these concerns which the Commission finds to be equivalent to those approved for the trading of ELNs at the Amex and ELDS at the NYSE.

The Commission notes that the CHX proposal also provides for unlisted trading privileges for ELDS listed on other exchanges. The Commission believes that unlisted trading privileges for ELDS is also consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market. Unlisted trading privileges allow for the trading of additional products at the CHX which are subject to listing standards that are equivalent to the CHX listing standards for ELDS. Accordingly, for the reasons stated herein, as well as in the Commission's ELNs approval for the Amex and the ELDS approval for the NYSE, the Commission finds that the CHX standards for listing and trading of ELDS are consistent with the Act and the listing and trading of ELDS is in the public interest.

Finally, the Exchange has requested, and the Commission agrees that, accelerated approval is appropriate in this instance. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. The Commission finds that the proposal closely conforms to the proposals already approved by the Commission

with respect to the listing and trading of ELNs on the Amex<sup>19</sup> and ELDS on the NYSE.<sup>20</sup> Accordingly, the CHX proposal presents no new regulatory issues. Moreover, both the NYSE and Amex proposals were subject to the full 21-day period, yet no comments were received by the Commission. Therefore, the Commission believes it is consistent with Sections 6(b)(5)<sup>21</sup> and 19(b)(2)<sup>22</sup> of the Act to approve the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-CSE-98-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-32664 Filed 12-8-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40740; File No. SR-NSCC-98-10]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Authorizing the Modification of NSCC's Collateral Management Service

December 3, 1998.

On July 22, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on October 16, 1998.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

NSCC's Collateral Management Service ("CMS") provides automated access to information on participants' clearing fund, margin, and other deposits at NSCC and other

participating clearing entities.<sup>3</sup> The purpose of this rule change is to add an interactive messaging feature to CMS. Specifically, NSCC is modifying CMS to: (i) enable participating clearing entities and participants to send and receive messages regarding collateral on an automated basis through CMS; (ii) enable participants that elect to participate in CMS to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral; and (iii) address the movement of collateral based on CMS messages. The modifications primarily affect Rule 53 (Collateral Management Service) of NSCC's Rules and Procedures.

NSCC intends to implement the modifications to CMS upon approval of the proposed rule change. Other participating clearing entities will be able to make the CMS modifications relating to clearing fund and margin deposits available on a phased-in basis at a time determined by each clearing entity.<sup>4</sup>

#### CMS Message Processing

NSCC is modifying NSCC Rule 53 to enable NSCC, participating clearing entities, and participating participants to send and receive interactive messages regarding their respective CMS information ("CMS messages"). CMS messages include the following: (i) a request by NSCC or a participating clearing entity to a participant for additional collateral; (ii) a request by a participant to NSCC or to a participating clearing entity to return excess collateral; (iii) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the entity where there is excess cash collateral; (iv) a request by a participant to NSCC or to a participating clearing entity to substitute collateral; and (v) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a clearing fund or margin deficit at an entity other than where there is excess cash collateral.

NSCC, participating clearing entities, and participating participants will send and receive CMS messages on an automated basis by using CMS message screens. Generally, the CMS message screens will contain fields to identify

<sup>14</sup> As noted earlier, ELNs, Equity Linked Term Notes are the same product, with the same terms and characteristics, as defined herein for ELDS.

<sup>15</sup> Exchange Act Release No. 32343 (May 20, 1993).

<sup>16</sup> Exchange Act Release No. 33468 (January 13, 1994).

<sup>17</sup> Release Nos. 34-32343 and 34-33468.

<sup>18</sup> *Id.*

<sup>19</sup> Release No. 34-32343.

<sup>20</sup> Release No. 34-33468.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 40536 (October 8, 1998) 63 FR 55664.

<sup>3</sup> For a detailed description of CMS, refer to Securities Exchange Act Release No. 36091 (August 10, 1995) 60 FR 42931 [File No. SR-NSCC-95-06].

<sup>4</sup> Each participating clearing entity will need to review its rules and to file any necessary proposed rule changes under Section 19(b) before making available to its participants the ability to move and withdraw collateral.