

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53399; File No. SR-CBOE-2005-87)

March 2, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

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 21, 2005, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission ( “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposal on December 14, 2005.<sup>3</sup> On February 24, 2006, CBOE filed Amendment No. 2 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to revise its non-option securities listing rules to incorporate into the Exchange’s delisting rules for non-option securities new rule changes promulgated by the Commission in SEC Rule 12d2-2.

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> 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

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

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**Chicago Board Options Exchange, Incorporated**

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**Rule 31.94. Suspension and Delisting Policies**

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**C. Application of Policies**

To assist in the application of these policies, the Exchange has adopted certain criteria, outlined below, which a security must meet to continue to be listed on the Exchange. However, these minimum criteria[,] in no way limit or restrict the Exchange's right to delist a security, and the Exchange may at any time, in view of the circumstances in each case, suspend dealings in, or remove, a security from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken regardless of whether the issuer meets any or all of the criteria discussed below.

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(b) Limited Distribution --Reduced Market Value

(i) common stock:

(A) the number of shares publicly held (exclusive of holdings of officers, directors, controlling shareholders or other family or concentrated holdings) is at least 200,000; and

(B) the total number of round lot shareholders of record is at least 300; and

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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.

(C) the aggregate market value of shares publicly held is at least \$1,000,000;

(ii) preferred stock:

(A) the number of shares publicly held is at least 50,000; or

(B) the aggregate market value of shares publicly held is at least \$1,000,000;

(iii) bonds: The delisting of bond and debenture issues will be considered on a case by case basis. The Exchange will normally consider suspending dealings in, or removing from the list, debt security when any one or more of the following conditions exist:

([a]A) if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000 or;

([b]B) if the issuer is not able to meet its obligations on the listed debt securities.

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Rule 31.94(C)(f) in the following form is effective until April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(f) no change

Rule 31.94(C)(f) in the following form will be effective on April 24, 2006.

(f) SEC Rule 12d2-2(a) Conditions –The Exchange will remove a class of securities from listing whenever the Exchange is reliably informed that any of the conditions set forth in Rule 12d2-2(a) under the Exchange Act exist with respect to such security, such as a corporate action where the entire security class is matured, redeemed, retired or extinguished by operation of law, and shall file an application with the SEC on Form 25 in accordance with Rule 12d2-2(a) under the Exchange Act.

New paragraph (g) of Rule 31.94(C) in the following form will be effective on April 24, 2006.

(g) Other Events --The Exchange will normally consider suspending dealings in, or removing from the list, a security when any one of the following events shall occur:

(i) Registration No Longer Effective --If the registration (or exemption from registration thereof) pursuant to the Exchange Act is no longer effective.

(ii) Operations Contrary to Public Interest --If the company or its management shall engage in operations which, in the opinion of the Exchange, are contrary to the public interest.

(iii) Failure to Pay Listing Fees --If the company shall fail or refuse to pay, when due, any applicable listing fees established by the Exchange.

(iv) Low Selling Price Issues --In the case of a common stock selling for a substantial period of time at a price less than \$3 per share, if the issuer shall fail to effect a reverse split of such shares within a reasonable time after being notified that the Exchange deems such action to be appropriate under all circumstances. In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors including, market conditions in general, the number of shares outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the company, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues.

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## **G. Delisting Procedures**

The following introductory sentence of Rule 31.94(G) is effective until April 23, 2006.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (redemptions or maturities) it will follow the following procedures:

The following introductory sentence of Rule 31.94(G) will be effective on April 24, 2006.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than the reasons set forth in Rule 31.94(C)(f) it will follow the following procedures:

(a) – (g) no change

Rule 31.94(G)(h) in the following form is effective until April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(h) no change

Rule 31.94(G)(h) in the following form will be effective on April 24, 2006.

(h) If the Board of Directors or the Executive Committee, as the case may be, shall approve the recommendation of the committee which has heard the matter, an application shall be submitted by the Exchange to the SEC to strike the security from listing (or unlisted trading) and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Exchange Act and the rules promulgated thereunder. The Exchange shall also provide public notice of its final determination to strike a class of securities from listing by issuing a press release and posting notice on the Exchange's

website at least ten days prior to the date that the delisting is anticipated to be effective.

The posting will remain on the Exchange's website until the delisting is effective.

The action required to be taken by the Exchange to strike a security from listing and registration for corporate actions such as redemption, maturity, and retirement is set forth in Exchange Rule 31.94(C)(f) and Rule 12d2-2(a) under the Exchange Act. The relevant portions of the Section and Rules under the Exchange Act pertaining to the suspension, removal or withdrawal of securities for all other reasons, and the requirements of the Exchange applicable in certain cases, are summarized below:

(a) SEC authorization of withdrawal or striking from listing of Exchange-listed security --Section 12(d) of Exchange Act;

(b) suspension of trading by Exchange --Rule 12d2-1 under the Exchange Act;

(c) application of Exchange to strike security from listing and registration --Rule 12d2-2(a) and (b) under the Exchange Act; or

(d) application of issuer to withdraw from listing and registration --Rule 12d2-

2(c) under the Exchange Act. Pursuant to Rule 12d2-2(c)(2)(i) under the

Exchange Act, an issuer filing an application on Form 25 must comply with all

applicable laws in effect in the state in which it is incorporated. Rule 12d2-

2(c)(2)(ii) under the Exchange Act provides that an issuer is required to provide

written notice to the Exchange of its determination to withdraw a class of

securities from listing and/or registration on the Exchange no fewer than ten days

before the issuer files an application on Form 25 with the SEC. As required by

Rule 12d2-2 under the Exchange Act, upon receiving written notice from an

issuer that such issuer has determined to withdraw a class of securities from

listing on the Exchange pursuant to this paragraph (d), the Exchange will provide notice on its website of the issuer's intent to delist its securities beginning on the business day following such notice, which will remain on the Exchange's website until the delisting on Form 25 is effective. The issuer must also notify the Exchange that it has filed Form 25 with the SEC contemporaneously with such filing.

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.

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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 CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 Commission adopted amendments to SEC Rule 12d2-2,<sup>5</sup> which sets forth procedures that national securities exchanges and issuers must follow in order to remove from listing, and withdraw from registration, securities under Section 12(b) of the Act.<sup>6</sup> The final rules<sup>7</sup> adopted by the Commission ("SEC Delisting Rules") generally require that national securities exchanges have in place procedures for the delisting and/or deregistration of a security that are consistent with SEC Rule 12d2-2.<sup>8</sup> The purpose of the proposed rule change is to incorporate into CBOE's non-option securities listing rules the new rules set forth in SEC Rule 12d2-2<sup>9</sup> so that the Exchange may continue to have the authority to suspend or delist securities from trading on the Exchange in the event that the issuer and/or securities of the issuer fail to adhere to certain of the Exchange's original and continued listing standards.

The provisions of SEC Rule 12d2-2(a),<sup>10</sup> which generally remain unchanged by the SEC Delisting Rules, require national securities exchanges to submit an application on SEC Form 25<sup>11</sup> within a reasonable time after the exchange is reliably informed that any of the conditions set forth

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<sup>5</sup> 17 CFR 240.12d2-2.

<sup>6</sup> 15 U.S.C. 78l(b).

<sup>7</sup> See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

<sup>8</sup> 17 CFR 240.12d2-2.

<sup>9</sup> Id.

<sup>10</sup> 17 CFR 240.12d2-2(a).

<sup>11</sup> 17 CFR 249.25.



in SEC Rule 12d2-2(a)(1) – (4)<sup>12</sup> exist. The conditions set forth in SEC Rule 12d2-2(a)(1) – (4)<sup>13</sup> generally relate to the redemption, retirement, or maturity of the entire class of securities, or the extinguishment of all rights of an entire class of securities of the issuer. Other than a submission by the Exchange to the Commission of SEC Form 25,<sup>14</sup> no other notice requirements or appeal rights are required to be provided to the issuer under SEC Rule 12d2-2(a)(1) – (4).<sup>15</sup>

In the event a national securities exchange determines to strike a class of securities from listing and/or withdraw the registration of such securities in cases other than as set forth in SEC Rule 12d2-2(a),<sup>16</sup> the SEC Delisting Rules require national securities exchanges to follow new procedures. Specifically, SEC Rule 12d2-2(b)<sup>17</sup> authorizes national securities exchanges to strike a class of securities from listing and/or withdraw the registration of such securities provided that the rules of such exchanges provide for the following: notification to the issuer of such determination; an opportunity for the issuer to appeal the determination; and upon a final determination of the Exchange to strike a class of securities from listing and/or withdraw the registration of such securities, provide public notice of such determination.

CBOE Chapter 31 sets forth the Exchange's non-option securities listing rules. Current CBOE Rule 31.94 generally sets forth the policies and procedures that apply to the delisting and suspension of listing of non-option securities on the Exchange, including the policies that guide the

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<sup>12</sup> 17 CFR 240.12d2-2(a)(1) – (4).

<sup>13</sup> Id.

<sup>14</sup> 17 CFR 249.25.

<sup>15</sup> 17 CFR 240.12d2-2(a)(1) – (4).

<sup>16</sup> 17 CFR 240.12d2-2(a).

<sup>17</sup> 17 CFR 240.12d2-2(b).

Exchange in determining whether to delist or suspend non-option securities. In regard to the process by which the Exchange delists non-option securities, current CBOE Rule 31.94(G) differentiates between delistings that result from "routine reasons," which are referred to in the introductory paragraph of that section as "redemptions or maturities," and all other types of delistings. The Exchange is only required to provide notice and the right to appeal delistings resulting from non-routine events, but not routine events.

To make the Exchange's delisting procedures consistent with SEC Rule 12d2-2,<sup>18</sup> the Exchange is proposing to revise current CBOE Rule 31.94(G) to clarify that the appeal and notification provisions for delistings that are currently set forth in CBOE Rule 31.94(G) will only apply to delistings that are based on reasons other than those that are set forth in SEC Rule 12d2-2(a)(1) – (4).<sup>19</sup> As stated above, SEC Rule 12d2-2(a)(1) – (4)<sup>20</sup> requires an exchange to file Form 25<sup>21</sup> within a reasonable time after it is reliably informed that, among other things, an entire class of securities has matured or has been redeemed or retired. The concept that the Exchange will delist a class of securities for the reasons set forth in SEC Rule 12d2-2(a)<sup>22</sup> is currently set forth in Rule 31.94(C)(f)(ii) and effective April 24, 2006, will be reflected in proposed Rule 31.94(C)(f) as revised. Proposed CBOE Rule 31.94(C)(f) also makes clear that the Exchange will file SEC Form 25<sup>23</sup> with the Commission in connection with any such delisting. Effective April 24, 2006, CBOE Rule 31.94(C)(f) in its current form will shift to new CBOE Rule 31.94(C)(g), except that

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<sup>18</sup> 17 CFR 240.12d2-2.

<sup>19</sup> 17 CFR 240.12d2-2(a)(1) – (4).

<sup>20</sup> Id.

<sup>21</sup> 17 CFR 249.25.

<sup>22</sup> 17 CFR 240.12d2-2(a).

<sup>23</sup> 17 CFR 249.25.

the substance of current Rule 31.94(C)(f)(ii) will remain in the form of proposed Rule 31.94(C)(f).

Likewise, the Exchange is revising CBOE Rule 31.94(G) to incorporate the new requirements set forth in SEC Rule 12d2-2(b).<sup>24</sup> The Exchange notes that 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 SEC Rule 12d2-2(b)<sup>25</sup> except for the requirement in SEC Rule 12d2-2(b)(iii)<sup>26</sup> that requires national securities exchanges to provide public notice of determinations to delist an issuer's securities. As stated above, the notice and appeal requirements only apply to delistings that result from events other than those provided pursuant to SEC Rule 12d2-2(a).<sup>27</sup> 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),<sup>28</sup> 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 SEC Rule 12d2-2(a).<sup>29</sup>

The Exchange is also proposing 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.

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<sup>24</sup> 17 CFR 240.12d2-2(b).

<sup>25</sup> Id.

<sup>26</sup> 17 CFR 240.12d2-2(b)(iii).

<sup>27</sup> 17 CFR 240.12d2-2(a).

<sup>28</sup> 17 CFR 240.12d2-2(b)(iii).

<sup>29</sup> 17 CFR 240.12d2-2(a).

These proposed changes reflect the requirements set forth in SEC Rule 12d2-2(c).<sup>30</sup> The proposed rule filing sets forth a requirement in addition to those set forth in SEC Rule 12d2-2(c)<sup>31</sup> that would require the issuer to notify the Exchange that it has filed Form 25<sup>32</sup> 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 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.<sup>33</sup>

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 SEC Rule 12d2-2.<sup>34</sup>

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5),<sup>35</sup> in that the proposed rule change is designed to promote just and equitable

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<sup>30</sup> 17 CFR 240.12d2-2(c).

<sup>31</sup> Id.

<sup>32</sup> 17 CFR 249.25.

<sup>33</sup> See Amendment No. 2, supra note 4.

<sup>34</sup> 17 CFR 240.12d2-2.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will enable the Exchange to remain competitive in the marketplace.

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

The proposed rule change does not 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, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

- (a) by order approve such proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2005-87 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2005-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CBOE-2005-87 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>36</sup>

Nancy M. Morris  
Secretary

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<sup>36</sup> 17 CFR 200.30-3(a)(12).