

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53665; File No. SR-CBOE-2005-87)

April 17, 2006

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

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> On February 24, 2006, CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the Federal Register on March 13, 2006.<sup>5</sup> No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

---

<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 proposed rule change 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 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>5</sup> See Securities Exchange Act Release No. 53399 (March 2, 2006), 71 FR 12749.

## II. Description of the Proposed Rule Change

Section 12 of the Act<sup>6</sup> 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 other Commission rules require the electronic filing of revised Form 25<sup>7</sup> 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.<sup>8</sup>

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.

---

<sup>6</sup> 15 U.S.C. 78j.

<sup>7</sup> 17 CFR 249.25.

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

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 25<sup>9</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

---

<sup>9</sup> 17 CFR 249.25.

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.<sup>10</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 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 exchange<sup>11</sup> and, in particular, the requirements of Section 6 of the Act.<sup>12</sup> Specifically, as discussed below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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

---

<sup>10</sup> See Amendment No. 2, supra note 4.

<sup>11</sup> 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).

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

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

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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.

---

<sup>14</sup> See CBOE Rule 31.94(G)(a)-(g).

<sup>15</sup> See CBOE Rule 31.94(G)(d).

<sup>16</sup> See CBOE Rule 31.94(G)(g).

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 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.<sup>17</sup> 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

---

<sup>17</sup> See Amendment No. 2, supra note 4.

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,<sup>18</sup> 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.<sup>19</sup>

Nancy M. Morris  
Secretary

---

<sup>18</sup> Id.

<sup>19</sup> 17 CFR 200.30-3(a)(12).