

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53686; File No. SR-CHX-2005-27)

April 20, 2006

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1, 2, and 3 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 17, 2005, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 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, CHX filed Amendment No. 1 to the proposed rule change.³ On February 17, 2006, CHX filed Amendment No. 2 to the proposed rule change.⁴ On March 15, 2006, CHX filed Amendment No. 3 to the proposal.⁵ The proposed rule change, as amended, was published

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, CHX made several changes to the proposed rule text of CHX Article XXVIII, Rule 4 to clarify the organization of the Rule; incorporate the requirement that issuers provide notice to the Exchange upon filing a Form 25; and clarify the effective dates for the old and the new CHX Rule 4.

⁴ In Amendment No. 2, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 relating to the timing of certain issuer obligations under amended SEC Rule 12d2-2 and made other grammatical corrections to the proposed rule text.

⁵ In Amendment No. 3, CHX included new language to the proposed rule text of CHX Article XXVIII, Rule 4 stating that if an issuer seeks to voluntarily withdraw its securities from listing and has either received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or is aware that it is below such continued listing policies and standards even if it has not received such notice from the Exchange, the issuer must disclose that it is no longer eligible for continued listing

for comment in the Federal Register on March 21, 2006.⁶ 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 Act⁷ and Rule 12d2-2 thereunder⁸ (“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 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.⁹

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:¹⁰

- (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

(including the specific continued listing policies and standards that the issuer is below) in: (i) its written notice to the Exchange of its determination to withdraw from listing required by amended Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its public press release and website notice required by amended Rule 12d2-2(c)(2)(iii) under the Act.

⁶ See Securities Exchange Act Release No. 53493 (March 16, 2006), 71 FR 14265.

⁷ 15 U.S.C. 78j.

⁸ 17 CFR 240.12d2-2.

⁹ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

¹⁰ See also Form 8-K (Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing), which sets forth disclosure requirements for issuers that do not satisfy listing standards.

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.

The Exchange proposes to amend the text of its Article XXVIII, Rule 4 relating to the delisting of securities to comply with the requirements of recently amended SEC Rule 12d2-2. With respect to the above requirements set forth in amended SEC Rule 12d2-2(b), CHX Article XXVIII, Rule 4 currently provides the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board. As required under amended SEC Rule 12d2-2(b)(1), CHX proposes to state in CHX Article XXVIII, Rule 4(f) that when a final determination is made with respect to the delisting of one or more securities of an issuer, the Exchange's Secretary promptly would provide public notice of that determination by issuing a press release and posting notice on the Exchange's Web site. This notice would be disseminated no fewer than 10 days before the delisting becomes effective and would remain posted on the Exchange's Web site until the delisting is effective. The proposed rule change also states that the Exchange will file Form 25 with the Commission and provide a copy to the issuer.

In the case of an issuer-initiated delisting, CHX Article XXVIII, Rule 4 currently requires that in the absence of special circumstances, a security would not be removed from listing and/or registration upon application of the issuer, unless the issuer files with the Exchange a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration. This provision would be retained in the CHX's amended Rule. CHX's

proposal would add a new requirement that the issuer must file a copy of Form 25 with the Exchange immediately after filing the Form 25 with the Commission.

In addition, CHX proposes revisions to CHX Article XXVIII, Rule 4(b) that would set forth, in general terms, the process that should be followed pursuant to amended SEC Rule 12d2-2 when an issuer seeks to voluntarily withdraw the listing or registration of a security on the Exchange. In such instances, CHX proposes 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; and
- (iii) Issue public notice of its intent to withdraw from listing and registration; and
- (iv) File Form 25 with the Commission.

CHX 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 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).

Finally, the proposal makes other non-substantive changes (such as inserting headings and making the text part of the rule itself, rather than an interpretation to the rule) that are designed to make the rule easier to read.

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 CHX 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 CHX's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

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).

CHX Article XXVIII, Rule 4 currently provides the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board. Specifically, issuers may appeal the Hearing Examiner's delisting determinations to the Board's Executive Committee.¹⁴ In addition, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.¹⁵

B. Issuer Voluntary Delisting

In the case of an issuer-initiated delisting, CHX proposes revisions to CHX Article XXVIII, Rule 4(b) that would set forth, in general terms, the process that should be followed when an issuer seeks to voluntarily withdraw the listing or registration of a security on the Exchange, including the issuer's obligation to file Form 25 with the Commission (and to submit it to the Exchange) and the Exchange's obligation to provide public notice of an issuer's voluntary request to delist securities. In the case of an issuer-initiated delisting, CHX proposes 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; and
- (iii) Issue public notice of its intent to withdraw from listing and registration; and
- (iv) File Form 25 with the Commission.

The Commission believes that the amendments will fully inform issuers of the

¹⁴ See CHX Article XXVIII, Article 4.

¹⁵ 15 U.S.C. 78f(b)(5).

requirements for voluntary delisting of their securities under CHX 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 file a copy of Form 25 with the Exchange immediately after filing Form 25 with the Commission. This requirement will allow the Exchange to be fully informed of the actual filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form.

CHX 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.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (File No. SR-CHX-2005-27), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁶ Id.

¹⁷ 17 CFR 200.30-3(a)(12).