34), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[88]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–21014 Filed 8–20–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44693; File No. SR–CBOE–2001–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Changes to the Exchange's Delisting Criteria

August 13, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''ACT'',[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2001, 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 prepared by the CBOE. On August 3, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] 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 CBOE proposed to change CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange (''Delisting Criteria Rule'' or ''CBOE Rule 5.4'').

The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

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Chicago Board Options Exchange, Inc. Rules

* * * * *

Chapter V—Securities Dealt In

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Withdrawal of Approval of Underlying Securities

Rule 5.4

Whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason no longer approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore may prohibit any opening purchase transactions in series of options of that class previously opened, to the extent it deems such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering the underlying security. When all option contracts in respect to any underlying security that is no longer approved have expired, the Exchange may make application to the Securities and Exchange Commission to strike from trading and listing all such option contracts.

. . . Interpretations and Policies

.01 The Board of Directors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to Paragraphs (a), (b), or (c) listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(a) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Securities Exchange Act of 1934.

(b) There are fewer than 1,600 holders of the underlying security.

(c) The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

(d) The market price per share of the underlying security closed below [$5] *$3 on the previous trading day* [on a majority of the business days during the preceding six calendar months] as measured by the highest closing price reported in any market in which the underlying security traded.

(e) The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

(f) The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

(g) If an underlying security is approved for options listing and trading under the provisions of Interpretation and Policy .05 of Rule 5.3, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when-issued'' trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs (c) and (d) of this Interpretation and Policy .01[, as well as the trading volume and market price requirements of Interpretation and Policy .04 of this Rule 5.4,] are satisfied, provided, however, that in the case of a Restructure Security approved for options listing and trading under paragraph (d) of Interpretation and Policy .05 of Rule 5.3, such trading volume requirements must be satisfied based on the trading volume history of the Restructure Security.

.02 In connection with Paragraph (d) of Interpretation and Policy .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than [$5]*3*[as measured by the highest closing price reported in any market in which the underlying security trades. Further, no series of options contracts will be opened with a strike price of less than $5.00 per share]. *Subject to Paragraph (d) of Interpretation and Policy .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading. For purposes of this Interpretation .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in any market at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price reported in any market in which the security is traded on the last trading day before the series are added.*

.03 No change.

[.04 Notwithstanding paragraph (d) to Interpretation .01 and Interpretation .02, the Exchange may continue to open for trading additional series of options contracts of a class covering an underlying security, provided.

(a) The aggregate market value of the underlying security equals or exceeds $50 million;

(b) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all expiration months;

[88] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 1, 2001 (''Amendment No. 1''). In Amendment No. 1, the CBOE made technical corrections to the rule text, clarified when the CBOE can open additional series of options contracts covering an underlying security, and described how the CBOE intends to measure the market price of the underlying security in the context of the instant proposed rule change.

(c) Trading volume in the underlying security (in all markets in which the underlying security is trading) has been at least 2,400,000 shares in the preceding twelve months; and

(d) The Market price per share of the underlying security closed at $3 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price reported in any market in which the underlying security traded, and further provided the market price per share of the underlying security is at least $3 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this Interpretation .04, the price of the underlying security as referenced in this paragraph .04(d) shall be $4.]

.04 [Reserved]

.05–.10 No change.

* * * * *

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, as amended, and discussed any comments if received on 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 section 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, Proposed Rule Change

1. Purpose

The Exchange's Delisting Criteria Rule currently provides that the Exchange may not list additional series on an option class if the underlying security has not closed above $5 for the majority of business days during the preceding six calendar months as measured by the highest closing price reported in any market in which the underlying security traded (''$5 guideline'')[4] The Delisting Criteria Rule provides limited exceptions to the $5 guideline such that series may be added even when the underlying security did not satisfy the $5 guideline if the underlying security met either a separate $3 guideline and a separate $4 guideline.

Change in Guideline Price. The Exchange is proposing to amend its Delisting Criteria Rule in a few respects. First, the Exchange is amending the Delisting Criteria Rule by changing the guideline price (set forth in Interpretation .01 to CBOE Rule 5.4) used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. The Exchange is changing the guideline price used to make this determination from $5 to $3.[5] In addition, the Exchange is eliminating the requirement for the Exchange to determine the guideline price by looking at whether the security closed above that price for a majority of the business days during the preceding six calendar months. Instead, the Exchange proposes to determine whether the underlying security closed above that price (*i.e.,* now proposed to be $3) on the previous trading day. The Exchange is not otherwise proposing to amend the other criteria used to determine whether a class of options meets the requirements for the continuance of approval (such as, the number of shares that must be held by non-insiders, number of holders, and trading volume).

Intra-Day Additions of Series. The Exchange is amending Interpretation .02 to CBOE Rule 5.4 by reducing from $5 to $3 the price above which the underlying security must be traded before the Exchange may add additional series of options intra-day. This means if the Exchange is adding a series intra-day, the underlying security must have closed above $3 the previous day (in order to meet the requirement of Interpretation .01(d) to CBOE Rule 5.4) and must be at $3 or above at the time the new series is added (in order to meet the requirement of Interpretation .02 to CBOE Rule 5.4).

Elimination of Interpretation .04 to CBOE Rule 5.4. The Exchange also is proposing to eliminate Interpretation .04 of the Delisting Criteria Rule. Interpretation .04 to CBOE Rule 5.4 sets forth guidelines for adding classes notwithstanding that the price of the underlying security does not meet the $5 guideline currently set forth in Interpretation .01 to CBOE Rule 5.4. Notwithstanding the $5 guideline, the interpretation currently provides that that the Exchange may add series if: (I) the closing price of the underlying security was over $3 for a majority of the days during the six calendar month period preceding the addition, and (2) the closing price of the underlying security must be $4 for a majority of the days during a subsequent six calendar month period. Because the Exchange is proposing to change the initial guideline from $5 to $3, Interpretation .04 to CBOE Rule 5.4 is no longer needed.

Reasons for Change to Delisting Criteria. When many of the delisting criteria were first implemented, the listed options market was in its infancy. Now more than twenty-seven years after the CBOE first started trading listed options, the listed options market is a mature market with sophisticated investors. The Exchange does not believe that the $5 guideline is necessary to accomplish its presumed intended purpose; *i.e.,* to prevent the proliferation of option classes on underlying securities that lack liquidity needed to maintain fair and orderly markets. The Exchange believes that it should allow the desires of the Exchange's customers and the workings of the marketplace to determine the securities on which the Exchange will list options.[6] The Exchange's own business considerations should ensure that the Exchange does not list inappropriate classes of options. In determining to list any number of new option series under the proposed less restrictive standard, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority can handle any increased capacity requirements.

Problems in Interpreting or Enforcing Current Standards. The Exchange has noted that the options exchanges, which have all adopted very similar delisting criteria, have frequently listed option series that are not permitted to be listed pursuant to these criteria. The Exchange believes this is at least partially due to the fact that the current listing criteria are subject to inconsistent interpretations by the different exchanges. These impermissible listings may have a number of negative consequences. Specifically, the Exchange believes that the violating exchange gains a competitive advantage over the competing exchanges who have not taken the same interpretation of the rules. Although the non-listing exchange may enlist the assistance of staff of the Commission to ensure that the listing exchange does not gain an unfair advantage, the Exchange has learned that this process cannot be completed quickly enough to prevent harm to the Exchange or its members. Typically, the Commission staff requires the violating exchange to begin the process of delisting the class by

[4] Other factors also must be met for the Exchange to add additional series in a class as described in Interpretation .01 to CBOE Rule 5.4.

[5] If the underlying security does not meet the guideline price then the Exchange will not open additional series of options of that class and may take other actions such as prohibiting opening purchase transactions in series of options of that class previously opened.

[6] Of course, the rule still provides that the security underlying the option must be listed on a national securities exchange or NASDAQ.

allowing closing only transactions. Nonetheless, the listing exchange still will typically list the improper series for a substantial period of time (often until expiration) because there likely will be open interest in that series. The listing exchange(s), in these circumstances, will be the only exchange(s) that is able to close out the open positions because it is the only exchange(s) where the series is listed. The Exchange has noted circumstances in the recent past where its trading crowds have lost member firm order flow, not only for the series which were improperly added by the listing exchange, but also for the entire class. The refusal of an exchange to violate its own rules to add improperly a series can have lasting effects as an order flow firm may reward those exchanges that were willing to list the series that its customers were interested in trading.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes the proposed rule change, as amended, is consistent with section 6(b) Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, because it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change, as amended, 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.

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 will:

(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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–29 and should be submitted by September 11, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–20975 Filed 8–20–01; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44705; File No. SR–CHX–2001–14]

Self Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Eliminate the ''E-Session'' After-Hours Trading Session

August 15, 2001.

On July 2, 2001, 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 to delete CHX Article XXA, which governed an after-hours trading session (the ''E-Session'') conducted by the Exchange, and to eliminate other rule references to the E-Session.

The proposed rule change was published for comment in the **Federal Register** on July 16, 2001.[3] The Commission received no comments on the proposal.

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 [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act [6] because it will allow the CHX to terminate its after-hours trading session, which has not sustained the increases in order flow that the Exchange anticipated when it implemented the E-Session in early 2000.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–2001–14) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–21017 Filed 8–20–01; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44534 (July 10, 2001), 66 FR 37081.

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44696; File No. SR–DTC–2001–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Movement of All DRS Issues Into Profile and the Establishment of the ''S'' Position as the Default Position

August 14, 2001.

On May 25, 2001, The Depository Trust Company (''DTC'') filed with the