should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–8642 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Progress Energy, Inc., Common Stock, No Par Value) File No. 1–15929

April 4, 2002.

Progress Energy, Inc., a North Carolina corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Issuer stated in its application that it has complied with PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Security from listing and registration on the PCX, the Issuer considered the direct and indirect costs associated with maintaining dual listings. The Issuer stated in its application that it will maintain its listing on the New York Stock Exchange (''NYSE''). The Issuer's application relates solely to the Security's withdrawal from listing on the PCX and shall not affect its listing on the NYSE or registration under Section 12(b) of the Act.[3]

Any interested person may, on or before April 26, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–8643 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45692; File No. SR–Amex–2002–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Commentary .02(c) of Rule 901C To Include Volume Weighted Average Pricing as a Permissible Index Option Settlement Value Calculation Methodology

April 4, 2002.

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 March 5, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Commentary .02(c) of Amex Rule 901C to add volume weighted average pricing (''VWAP'') as a permissible index option settlement value calculation methodology. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

Designation of Stock Index Options

Rule 901C

(a)–(c) No change.

Commentary

.01 No change.

.02 The Exchange has received approval, pursuant to the Securities Exchange Act of 1934 (''Act''), to list options on stock industry index groups pursuant to Rule 19b–4(e) of the Act provided each of the following criteria are satisfied:

(a) No change.

(b) No change.

(c) Expiration and Settlement—Options on an index established pursuant to this Commentary will be cash settled and the index value for purposes of settling a specific index option will be calculated based upon *either* the primary exchange regular way opening sale prices for the component stocks *or the primary exchange regular way opening sale prices for components listed on a national securities exchange and volume weighted average prices for component stocks listed on NASDAQ/NMS.*

(d) 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 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 IV 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 Exchange proposes to amend Commentary .02(c) to Amex Rule 901C to add VWAP as a permissible index option settlement value calculation methodology. Currently, Commentary .02(c) of Amex Rule 901C provides that index settlement values are determined by using the regular way opening sale price for each of an index's component stocks in its primary market on the last trading day prior to expiration.[3] Unlike exchange-listed securities where there is a market opening price at which all

[4] 17 CFR 200.30–3(a)(1).

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

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Securities Exchange Act Release No. 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (SR–Amex–95–26) (order approving the listing and trading of options on the Morgan Stanley High Technology 35 Index).

investors entering a market-on-open order can participate, investors in National Association of Securities Dealers Automated Quotation System (''NASDAQ'') National Market System (''NMS'') securities cannot be sure of transactions at a price equal to the first reported print. In some instances, this price may be significantly different than the first price at which most investors can conduct transactions. As a result, investors, market-makers and the specialist cannot be sure that any hedges into which they may have entered will converge to the settlement value for the index; and, in some cases, the value of the hedge may differ significantly from the index settlement value. This uncertainty adds to the cost of trading the options and makes them less desirable to trade. While it may still be difficult to get complete convergence, using the VWAP provides more opportunity for investors to transact at a price near the settlement price, making it much less likely that there will be any significant difference between the hedge and the settlement value. For this reason, the Exchange is proposing to permit, in addition to ''regular way'' opening price settlement, the VWAP settlement calculation methodology for NASDAQ/NMS listed components.

To obtain the component price to be used in the settlement calculation of an index subject to VWAP, the Exchange would revise the settlement calculation methodology by using VWAP for all NASDAQ/NMS component securities of such index option during the first five minutes of trading immediately following the first reported trade for the component. Once the first trade in a component occurs, that component's VWAP is determined by multiplying the number of shares traded (volume) by the price at which those shares traded (execution price) for each trade, adding up all of these products and dividing this sum by the total number of shares traded (total volume) during the five minute period immediately following the initial trade.[4] For all other components (*i.e.,* those with the Amex or the New York Stock Exchange as their primary market), an index's settlement value would continue to reflect the regular way opening sale prices for each of an index's component stocks in their primary market on the last trading day prior to expiration.

The settlement calculation methodology currently used for NASDAQ/NMS components of existing Amex index options will continue to be used for settlement of the Exchange's index options unless the Exchange specifically determines to use the proposed VWAP settlement calculation methodology. A change to a VWAP settlement methodology for NASDAQ/NMS components of index options will require that the existing opening price regular way methodology be used for the settlement of outstanding index options series as of the time of the introduction of the VWAP methodology. Upon a determination to change to a VWAP methodology, the Exchange will inform its members of such change in the settlement methodology through dissemination of an information circular. The circular will detail the method by which contracts settling under the current opening price regular way settlement will be phased out and those settling based on the VWAP methodology will be introduced.[5]

Thereafter, any newly introduced index option series would settle based on the VWAP methodology. Index option contracts would be aggregated regardless of the settlement methodology for purposes of determining compliance with positions and exercise limits. Long Term Equity Anticipation Securities (''LEAPS'') outstanding as of the date of the introduction of option contracts using the VWAP methodology would continue to settle based on opening price regular way methodology. Any newly introduced LEAPS would be subject to VWAP methodology.

The Exchange believes that permitting the VWAP settlement calculation methodology for NASDAQ/NMS component securities of an index option is appropriate and should result in a settlement value more reflective of the markets in NASDAQ/NMS securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either 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.

The Amex has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

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. 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

[4] The VWAP for all NASDAQ/NMS stocks included in the index will be calculated by the NASDAQ index calculation group and forwarded electronically to the Amex's index calculation group to permit Amex's index calculation group to include the values in its determination of the final settlement value.

[5] The Exchange states that the Options Clearing Corporation has been informed of this rule filing and has no objections to the proposed rule change. Telephone message from Jeffrey P. Burns, Assistant General Counsel, Amex, to Cyndi Nguyen, Attorney, Division of Market Regulation, Commission, on March 18, 2002.

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

[7] 15 U.S.C. 78f(b)(5).

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Amex–2002–15 and should be submitted by April 25, 2002.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–8644 Filed 4–9–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45688; File No. SR–CBOE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange Relating to Refunds of Unspent Marketing Fee Account Balances

April 3, 2002.

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 March 22, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the CBOE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to change its fee schedule to permit Designated Primary Market Makers (''DPMs'') who have collected marketing fees pursuant to the CBOE's fee schedule to refund the unspent balance of the fees back to the market makers who paid them. The text of the proposed rule change is available at the CBOE and at the Commission.

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 and discussed any comments it had 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 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

In July 2000 the CBOE imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate DPM to attract order flow to the CBOE.[3] In July 2001, the CBOE suspended the assessment of the marketing fee but reserved the right to reinstate the assessment of the fee by filing a proposed rule change with the Commission at a future date.[4]

Since July 2001, the DPMs have not spent all of the funds that have been collected. Some DPMs have asked the CBOE for permission to refund the unspent funds to the market makers who paid the fees. The CBOE proposes to give DPMs the right—though not the obligation—to refund the unspent funds, on a *pro rata* basis, to the market makers who contributed the funds. The CBOE and its clearing members would facilitate the refunds by issuing appropriate debits and credits to the applicable accounts of DPMs and market makers.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[5] and furthers the objectives of Section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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 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 CBOE neither solicited nor received any written comments with respect to the proposed rule change.

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

Because the proposed rule change establishes or changes a due, fee, or other charge that the CBOE has imposed, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 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 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 the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–2002–14 and should be submitted by May 1, 2002.

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000) (SR–CBOE–00–28).

[4] *See* Exchange Act Release No. 44717 (Aug. 16, 2001), 66 FR 44655 (Aug. 24, 2001) (SR–CBOE–2001–43).

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

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).