directed to the following person: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: October 1, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26996 Filed 10–7–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40516; File No. SR–CHX–98–7]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, and 3 to the Proposed Rule by the Chicago Stock Exchange, Inc. Regarding Maintenance Standards and Listing Requirements.

September 30, 1998.

I. Introduction

On March 18, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] In the filing, the CHX proposed rule amendments that would set forth listing and maintenance requirements for securities that are also listed on another primary market and modify the maintenance and delisting standards for securities listed on Tier II of the Exchange. Notice of the proposed rule change was published in the **Federal Register** on April 30, 1998.[3] No comments were received on the proposal. On June 15, 1998, the CHX submitted Amendment No. 1 to the proposed rule change.[4] Amendment No. 2 was subsequently filed on August 20, 1998.[5] A final amendment to the proposal was filed with the Commission on September 30, 1998.[6] This order approves the proposed rule change as amended. Amendments No. 1, 2, and 3 are herein approved on an accelerated basis.

II. Description of the Proposal

the Exchange proposes to amend CHX listing and maintenance requirements as set forth in Exchange Rules 14, 15, 16, 17 and 22 of Article XXVIII and the Interpretation and Policy .01 of Rule 2 of Article XXVIII. the proposed rule amendment relate to four general listing issues: (i) Tier II listing standards for stock warrants, (ii) listing application requirements for securities that are listed or approved for listing on certain other markets, (iii) delisting of a security for lack of sufficient trading volume, and (iv) the elimination of certain maintenance listing standards for securities currently listed on certain other markets.

A. Tier II Stock Warrants

The Exchange does not currently have maintenance standards for stock warrants listed on Tier II of the Exchange. The proposed rule change would revise Rule 22(b) under Article XXVIII to require that, in the case of Tier II stock warrants, the common stock of the company or other security underlying the stock warrants meets the applicable Tier II maintenance requirements. Similar requirements currently exist for stock warrants listed pursuant to the Exchange's Tier I listing standards, which in general are subject to quantitatively and qualitatively higher standard then Tier II listed securities.[7] By adopting the proposed maintenance standards for Tier II stock warrants, the rule change would permit the Exchange to delist stock warrants that do not have adequate backing of an underlying security.

B. Listing Application Requirements for Certain Securities Listed on Other Markets

Currently, the Exchange may list a security of an issuer that is listed or has been approved for listing on another primary market. The proposed rule change would add a new Interpretation .03 to Article XXVIII to state that if the Exchange chooses to list, under either Tier I or Tier II, a security listed or approved for listing, within the past twelve months, on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), except for Emerging Company Marketplace (''ECM'') securities,[8] or the Nasdaq National Market, the issuer shall not be required to fulfill all the requirements for an original listing application.

Specifically, the issuer shall be required to submit to the Exchange (1) a copy of the application for listing on the NYSE, Amex or Nasdaq National Market, together with all supporting materials, (2) a board resolution of the issuer authorizing listing on the Exchange, (3) the issuer's latest Form 10–K, most recent three Form 10–Qs, and most recent proxy statement (for non-IPOs), or the issuer's latest registration statement and exhibits (for IPOs), (4) the required listing fee, (5) an executed Exchange listing agreement, (6) evidence of approval for listing by the NYSE, Amex or Nasdaq National Market, (7) a specimen stock certificate, (8) the issuer's registration statement filed under the Act, and (9) a Letter of Reliance authorizing the Exchange to process the application and supporting materials in lieu of an original listing application. In addition to the nine enumerated items required for the alternative listing application, Amendment No. 1 to the proposal requires the issuer to submit to the Exchange any other information deemed appropriate by the Exchange is order to render a decision concerning listing eligibility.

Amendment No. 1 also revises the instructions for the preparation of an original listing application set forth in the Interpretation and Policy .01 of Rule 2 under Article XXVIII to delete the requirement that financial statements certified by independent public

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39906 (April 23, 1998), 63 FR 23821.

[4] *See* Letter from Patricia Levy, Senior Vice President and General Counsel, CHX, to Sarrita Cypress, SEC, Division of Market Regulation, dated June 15, 1998. the terms of Amendment No. 1 to the proposal are discussed in Section II of this approval order.

[5] *See* Letter from Patricia Levy, Senior Vice President and General Counsel, CHX, to Sarrita Cypress, SEC, Division of Market Regulation, dated August 20, 1998. The terms of Amendment No. 2 to the proposal are discussed in Section II of this approval order.

[6] *See* Letter from Andre E. Owens, Schiff Hardin & Waite, to Sharon Lawson, Division of Market Regulation, dated September 30, 1998. The terms of Amendment No. 3 to the proposal are discussed in Section II of this approval order.

[7] *See* CHX Rule 17(a)(1) under Article XXVIII.

[8] The Amex has discontinued the listing of new companies on the ECM and eliminated ECM guidelines that allow for such new listings. Companies previously approved for trading on the Amex as ECM listed companies continue to trade on the Amex until they graduate to the Amex's main list by meeting the appropriate listing standards, or delist, either voluntarily or because they fail to meet the ECM listing standards. *See* Securities Exchange Act Release No. 36079 (August 9, 1995), 60 FR 42926 (August 17, 1995), approving the discontinuation of the ECM.

accounts be specifically addressed to the Exchange. This will in turn permit financial statements otherwise addressed to an issuer or another exchange to be used for purposes of preparing a CHX listing application.[9]

C. Delisting for Lack of Sufficient Volume or Other Factors Not in the Public Interest

Current Rule 22(c) of Article XXVIII provides that Tier II listed issues will normally be considered for delisting if the company fails to maintain a net worth which is the greater of 150% of the prior year's consolidated net loss of $500,000, or when the volume of trading declines to a level which will not support a listed market in the judgment of the Exchange and its Committee on Floor Procedure. According to the CHX, the proposed rule change would eliminate the specific reference to volume of trading as vague and unnecessary in light of the authority Rule 22(a) grants the Exchange to delist Tier II securities.[10]

To clarify the intended scope of authority presently granted in Rule 22(a), Amendment No. 1 to the proposed rule change revises Rule 22(a) to explicitly state that the Exchange may determine on an individual basis suitability for continued listing of an issue in light of all pertinent facts whenever it deems such action to be appropriate. The amendment further states that many factors may be considered in this connection, including, but not limited to, abnormally low selling prices or volume of trading. The reference to trading volume as a factor to be considered for continued listing of the CHX is thus specifically incorporated into the Exchange's general grant of authority for delisting Tier II securities. Finally, Amendment No. 1 revises Rule 22(a) to expressly state that the CHX has the authority to delist a security even though the security continues to be listed on the NYSE, Amex, or Nasdaq National Market.[11]

Amendment No. 2 to the proposal provides further clarification of the Exchange's authority to make an independent determination of the continued suitability of securities listed on the CHX as established in Amendment No. 1. Specifically, Amendment No. 2 deletes language from amended Rule 22(a) that could be interpreted to allow the Exchange to continue to list an issue that fails to meet CHX listing maintenance requirements.[12] This language was deleted from the proposal to prevent an improper conclusion that listing maintenance standards could be waived by the CHX. The Amendment thereby reiterates the affirmative obligation of the CHX to take appropriate action to suspend or delist securities that fail to meet CHX Tier II listing maintenance standards.

Maintenance Listing Standards

1. Amendments Regarding Securities Listed on Other Markets. Currently, Rules 14, 15, 16, 17, and 22 of Article XXVIII establish certain maintenance standards that Tier 1 and Tier II listed securities must meet in order to continue to be listed on the Exchange. As provided in the proposed rule change, if a security listed on the Exchange is also listed on the NYSE, Amex (except for ECM securities)[13] or Nasdaq National Market, it shall not be required to meet certain of the maintenance standards contained in the CHX rules, as long as the security continues to be listed and has not been suspended from trading on such other market.[14] According to the CHX, the adoption of the rule change will avoid a situation where the Exchange might be forced to delist a security that fails certain maintenance tests, when it continues to meet the maintenance requirements of one of the three aforementioned stock markets. Nevertheless, as discussed below, pursuant to Amendment No. 1, the CHX will retain independent authority to delist a security, even if it continues to be listed on the Amex, NYSE or Nasadq National Market.

To facilitate the CHX's efforts to independently determine if dually listed issuers meet CHX listing standards, when they fail to meet the standards of another market, Amendment No. 3 to the proposal revises Article XXVIII, Rule 21 to create a new rule, Rule 21(r). Rule 21(r) requires dually listed issuers to notify the CHX promptly if, during the time a CHX listed security is also listed on another market that the listed security has fallen below the continued listing requirements of such other market. Upon receipt of this notification, the CHX has stated that it will immediately conduct an independent review to determine if the issuer should continue to be listed on the CHX.[15]

As stated above, a CHX dually listed security that is delisted or suspended from trading on the NYSE Amex, or Nasdaq National Market would have to meet the CHX's maintenance standards in order to continue trading on the CHX. In the event that an issuer is suspended from trading on the NYSE, Amex, or Nasdaq National Market, the CHX will confirm that the issuer wishes to maintain its listing on the CHX. Thereafter, the CHX will make an independent determination as to whether the issuer continues to meet the relevant requirements for listing on the CHX. If the issuer does not meet the relevant requirements, or if the issuer does not desire to maintain its listing, the issue will be suspended from trading on the CHX immediately and the CHX will take all appropriate actions to delist the security.

Further clarification of the CHX's independent authority to take action with respect to dually listed securities is set forth in Amendment No. 1. specifically, the amendment confirms

[9] Interpretation and Policy .01 of Rule 2 was also amended to correct a typographical error and revise the numbering of the provisions contained therein.

[10] Currently, Rule 22(a) states that, ''[T]he Exchange reserves the right to delist securities of any corporation, subject to the Securities and Exchange Commission rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern, or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation.''

[11] See discussion *infra*, for a description of CHX rule revisions that allow an issuer to continue to be listed on the CHX by virtue of its listing on the Amex (except for ECM securities), NYSE or Nasdaq National Market.

[12] Amendment No. 1 states that, ''[T]he Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of a issue in light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet enumerated criteria * * *'' (Emphasis added). Amendment No. 2 deletes the language ''fails to meet'' from this provision.

[13] See note 8 *supra*.

[14] The proposal would exempt from the Exchange's quantitative maintenance standards securities that are also listed on the NYSE, Amex, or Nasdaq National Market. The quantitative maintenance standards govern, for example, net tangible assets, the number of public beneficial shareholders, and the market value of an issuer's shares publicly held. *See* Article XXVIII, Rule 14, Tier I Maintenance Requirements for Common Stock; Rule 15, Tier I Maintenance Requirements for Preferred Stock; Rule 16, Tier I Maintenance Requirements for Bonds and Debentures; Rule 17, Tier I Maintenance Requirements for Stock Warrants and Contingent Value Rights; and Rule 22, Tier II Maintenance Standards. The Commission notes that the proposed rule change would not provide an exemption from the Exchange's corporate governance and disclosure requirements for securities that maintain a listing on the CHX and are otherwise listed on the NYSE, Amex, or Nasdaq National Market. *See*, Article XXVIII, Rule 19, Tier I Corporate Governance and Disclosure Standards; Rule 20, Tier I Voting Rights; and Rule 21, Tier II Corporate Governance, Disclosure and Miscellaneous Requirements.

[15] Telephone conversation between Patricia Levy, Senior Vice President and General Counsel, CHX, with Sharon Lawson and Sarrita Cypress, SEC, Division of Market Regulation, September 28, 1998.

the Exchange's independent authority, pursuant to Article XXVIII, Rule 3 to suspend any security from dealings when the NYSE, Amex, or Nasdaq National market suspends the same security from dealings regardless of whether delisting procedures have been instituted.

2. New Rule 17A Maintenance Standards. Amendment No. 1 to the proposal adopts a new provision, Rule 17A under Article XXVIII, which establishes maintenance standards applicable to all Tier I issues. Specifically, these provisions confirm the Exchange's authority to delist Tier I securities if the Exchange deems such action to be necessary to protect the interest of public investors. Exchange rules currently contain similar protection with respect to the CHX's authority to delist Tier II securities.[16] By the terms of Amendment No. 1 to the proposed rule change, the Exchange reserves the right to delist the securities of any corporation, subject to SEC rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue.

New Rule 17A further states that the CHX reserves the right to delist the securities of any corporation which has drastically changed its corporate structure or its type of operation. Consistent with Amendment No. 1 revisions to Rule 22(a) under Article XXVIII, Rule 17A confirms the Exchange's authority to make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in light of all pertinent facts. New Rule 17A states, moreover, that the Exchange retains the authority to delist a security even if it meets the CHX's enumerated criteria by virtue of an issue's continued listing on the NYSE, Amex or Nasdaq National Market. The Exchange notes that many factors will be considered in this connection, including, but not limited to, abnormally low selling price or volume.

Amendment No. 2 to the proposal provides a further clarification of the Exchange's authority to make an independent determination of the continued suitability of Tier I securities listed on the CHX. Specifically, Amendment No. 2 deletes language from Rule 17A that could be interpreted to allow the Exchange to continue to list an issue that fails to meet CHX listing maintenance requirements.[17] This language was deleted from the proposal to make it clear that CHX maintenance standards can not be waived by the CHX in the exercise of its independent authority to suspend or delist securities listed on the Exchange. Accordingly, it reiterates the affirmative obligation of the CHX to take appropriate action to suspend or delist securities that fail to meet CHX Tier I listing maintenance standards.

III. Discussion

The Commission finds that the proposed rule change is consistent with section 6(b) of the Act.[18] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, 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.[20]

The development and enforcement of adequate standards governing initial and continued listing of securities on an exchange is of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers, and to provide listed status only to *bona fide* companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and characteristics of that issue to ensure that it continues to meet standards for market depth and liquidity.

The Commission believes the proposed rule change enhances the ability of the Exchange to facilitate legitimate capital formation for issuers while providing appropriate protection to public investors in its markets. For example, the proposed rule change crates maintenance standards for stock warrants listed on Tier II of the Exchange similar to standards that now exist for Tier I warrants. Under these standards, the common stock or security underlying the stock warrant must meet all of the Tier II maintenance requirements as set forth in Article XXVIII, Rule 22.[21] This amendment fosters investor protection by providing the Exchange with the authority to delist stock warrants where the underlying security may lack certain characteristics, such as a sufficient investor base or public float, while providing a market place for warrants where the underlying securities have adequate depth and liquidity to support exchange trading.[22]

As described above, the proposal would also clarify that if the Exchange chooses to list, under Tier I or Tier II, a security listed or approved for listing within the past twelve months on the NYSE, the Amex (except for ECM securities) or the Nasdaq National Market, the issuer shall not be required to fulfill all of the requirements for an original listing application, but rather an alternative list of requirements. The Commission believes this rule change will provide the Exchange greater flexibility in determining in an expedited manner which securities warrant inclusion on the Exchange, without compromising the benefits that the Exchange's listing process offers to investors in ensuring that securities meet the listing standards.

The Commission notes, for example, that companies using the alternative listing methods will have to provide a copy of the original application filed with the other listed market. This should generally contain much of the same information required by the CHX's listing application. Further, a company using this listing method will be required to submit its last 10–K and 10–Q and most recent proxy statement. This will ensure that the CHX will have the

[16] *See* CHX Rule 22(a) under Article XXVIII.

[17] Amendment No. 1 states that, ''[T]he Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of a issue in light of all pertinent facts whenever it deems such action appropriate, even though a security meets or **fails to meet** enumerated criteria * * *.'' (Emphasis added). Amendment No. 2 deletes the language ''fails to meet'' from this provision. Conforming amendments were also made to Section 22(a). *See* note 12 *supra.*

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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

[21] Under Section 22(b), issues will normally be considered for delisting if publicly held shares, excluding officers, directors, and other concentration, fall below 100,000 common shares or under 50,000 preferred shares. Issues will also be considered for delisting if the stockholders drop below 500 for preferred and common stock. As amended by this approval order, Section 22(c) further provides that issues will be considered for delisting if the company fails to maintain a net worth which is the greater of (i) 150% of the prior year's consolidated net loss or (ii) $500,000.

[22] In discussions preceding the approval of the instant filing, the CHX agreed to consider adopting additional standards to govern CHX listed warrants. The CHX will consider, for example, the appropriateness of establishing maintenance standards that provide for a minimum number of public shareholders of warrants to maintain continued listing on the CHX. Telephone conversation between Patricia Levy, Senior Vice President and General Counsel, CHX, with Sharon Lawson and Sarrita Cypress, SEC, Division of Market Regulation, June 10, 1998.

most updated financial information to analyze an issuer's suitability for listing and that CHX will not be relying on stale information submitted to the original marketplace. As noted above, the CHX has also included a requirement that allows the Exchange to ask for any additional information it deems appropriate to support the listing application. Accordingly, to the extent the original application raises questions or needs supplementation, the CHX will have the power to ask for additional information. Finally, the Commission notes that these changes adopt an alternative application procedure only for those companies that have already gone through a recent listing process with a primary market center (*i.e.*, Nasdaq National Market Amex or NYSE). It does not change the CHX's duty to continue to ensure that all listed companies meet the applicable listing standards prior to listing.

With respect to the maintenance standards for securities listed on the Exchange, the proposed rule change provides that if a security listed on the CHX is also listed on the NYSE, Amex (except for ECM securities)[23] or Nasdaq National Market, and it continues to be listed on such other market, it shall not be required to meet certain of the maintenance standards contained in the Exchange's rules. The Commission has carefully considered this provision of the proposed rule change. While the provision raises certain concerns, the Commission believes that the interests of investors are adequately protected because of certain safeguards that are built into the rules.

First, under the proposal as amended by the terms of Amendments No. 1 and No. 2, the CHX can only continue to list a security that fails the quantitative maintenance standards if it continues to be listed and has not been suspended from trading on the primary markets. If a dually listed security is not required to meet the CHX's maintenance standards by virtue of its trading on a primary market, and it is subsequently suspended or delisted from trading on such market, the Exchange would have to make an immediate and independent determinations as to whether the issue meets maintenance standards and can continue to list on the CHX. If it does not meet such standards, (or the issuer does not wish to continue listing on the CHX) the CHX has stated that the issue will be suspended from trading immediately and appropriate action will be taken to delist the security. Accordingly, the amended proposal should prevent issues that are clearly not meeting the quantitative listing maintenance standards of a primary market or the CHX from continuing to be traded on the CHX.

Further, the proposal, as amended, gives the Exchange specific authority to delist a security based on all pertinent facts even though the security continues to meet CHX listing standards, by, for example, continued listing on the NYSE, Amex, or Nasdaq National Market. The Commission notes that allowing the CHX to not apply its quantitative maintenance standards to a security listed on either of the three primary markets assumes, to a certain extent, that the primary market's own quantitative listing standards are being met. While in most instances we expect this to be the case, because compliance with maintenance standards will be the province of another SRO, the Commission believes it is extremely important that the CHX independently have the ability to delist a security if it has concerns about the issue or issuer. In this regard, the Commission expects the CHX to continue to periodically monitor dually listed issues. If it appears that there are concerns involving a listed company and that company continues to trade on a primary market, we would expect CHX to do a reasonable inquiry to ensure it should remain on CHX.[24]

As discussed above, Amendment No. 3 to the proposal requires an issuer of dually listed stock to notify the CHX if the issue falls below the continued listing standard of another market. The Commission believes this notification will provide the Exchange valuable assistance in its efforts to monitor dually listed issues to ensure compliance with listing maintenance standards.

Finally, we note that issuers of dually listed stocks will still continue to have to separately comply with the qualitative and disclose maintenance listing standards that exist under CHX rules to protect investors and will not be exempted from such requirements by virtue of trading on a primary market.[25] Accordingly, the Commission believes that although it is a very close question whether an issue listed on CHX should not have to meet certain maintenance standards as long as it continues to trade on a primary market, the protections discussed above should help to ensure continued suitability of issues for trading on the CHX.

The Commission finds good cause for approving Amendments No. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission believes good cause exists to accelerate approval of Amendment No. 1 to the proposal because the amendment makes significant clarifying changes to the rule proposal and strengthens the Exchange's authority to monitor and enforce the proposed revisions to its stock listing and maintenance requirements that are set forth in the original proposal. For example, in addition to the enumerated items identified in the original filing, Amendment No. 1 provides the Exchange with the authority to obtain any information it deems appropriate to determine the eligibility for listing on the CHX for those securities that have previously been listed on certain other markets. Further, critical to protecting the interest of investors, Amendment No. 1 gives the Exchange independently authority to delist or suspend a security that was previously excepted from listing maintenance requirements based on the security's listing on another exchange. The Commission believes, moreover, that there is good cause to accelerate the approval of Amendment No. 1 because it clarifies possible ambiguities regarding the scope of the Exchange's authority to delist securities.

Amendment No. 1 gives the Exchange broad authority to delist Tier I securities similar to that for Tier II securities. Based on the above, the Commission believes the terms and conditions of Amendment No. 1 clarify possible ambiguities regarding the scope of the CHX's proposal, as well as it provides crucial investor protection safeguards that are necessary to implement the revisions to the CHX listing and maintenance standards that are set forth in the proposal as originally filed.

The Commission believes good cause exists to accelerate the approval of Amendments No. 2 to the proposal because Amendment No. 2 provides a crucial clarification of the Exchange's authority to make an independent determination of the continued suitability of securities listed on the CHX. Specifically, Amendment No 2 deletes language from new Rule 17A and amended Rule 22(a) that could be interpreted to allow the Exchange to continue to list an issue that fails to meet CHX listing maintenance requirements. This language was deleted from the proposal to make it clear that CHX maintenance standards are not waivable.

Finally, good cause exists to accelerate the approval of Amendment

[23] See not 8 *supra*.

[24] For example, the CHX's periodic review might include a review of news reports regarding dually listed issuers.

[25] *See* note 14 *supra* for a listing of qualitative standards.

No. 3 to the proposal, because the amendment requires a dually listed issuer to promptly notify the CHX if the issue falls below the continued listing maintenance standards of another market. This notification will in turn allow the CHX to ensure that the interests of investors are protected because the CHX will conduct an immediate independent determination of whether the issuer should continue to be listed on the Exchange.

In granting accelerated approval for Amendments Nos. 1, 2, and 3, the Commission notes that it did not receive any comments on the original proposal, which was noticed for the full statutory period. In addition, the amendments strengthen and clarify the CHX's original proposal. Accordingly, for the reasons stated above, the Commission finds that there is good cause, consistent with Sections 19(b)[26] and 6(b)(5)([27] of the Act, to accelerate approval of Amendments Nos. 1, 2 and 3.

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1, 2, and 3 including whether the amendments are 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. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principle office of the CHX. All submissions should refer to File No. SR–CHX–98–07 and should be submitted by October 29, 1998.

IV. Conclusion

For the reasons stated above, the Commission believes the CHX's amended proposal is consistent with the Act and, therefore, has determined to approve it. The amended proposal provides the Exchange with greater flexibility in listing and maintenance standards for CHX listed securities, while continuing to ensure the protection of investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the amended proposed rule change, SR–CHX–98–07, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26997 Filed 10–7–98; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40511; File No. SR–NASD–97–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 by the National Association of Securities Dealers, Inc., Relating to the Application of NASD's Mark-up Policy to Transactions In Government And Other Debt Securities

September 30, 1998.

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 August 20, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, On August 26, 1998, the Association filed Amendment No. 1 to the proposed rule change.[3] Amendment No. 1 replaces and supersedes the original proposed rule change and is described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASD Regulation''). On September 8, 1998, the Association filed Amendment No. 2 in which the Association consented to an extension of the time period to 60 days for Commission action specified in Section 19(b)(2) of the Act[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, SEC (Aug. 26, 1998).

[4] Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, SEC (Sept 8, 1998).

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

NASD Regulation is proposing NASD Rule IM–2440–2 to provide guidance to the membership on mark-up and mark-down practices for debt securities, excluding municipal securities. NASD Regulation also proposes to renumber current Rule IM–2440 as Rule IM–2440–1. Below is the text of the proposed rule change. Proposed new language is in italics.

IM–2440–*1*. Mark-Up Policy

* * * * *

IM–2440–2. Interpretation Of The Board of Governors—Application Of the NASD Mark-Up Policy To Transactions In Government And Other Debt Securities[5]

As a result of the Government Securities Act Amendments of 1993 that expanded the NASD's sales practices authority to encompass government securities, the Board believes it is appropriate to provide guidance to the membership on mark-up and mark-down[6] *practices for such securities, as well as for other debt securities, except for municipal securities.*[7] *The market for government and debt securities is as multidimensional as the securities themselves. The markets range from the Treasury securities market—representing the largest, most liquid securities market in the world—to markets for collateralized mortgage obligations and structured securities, which often are substantially less liquid and which include securities with features that are highly unique or are customized for particular investors. Therefore, the mark-ups and mark-downs charged on government and other debt securities must properly reflect the facts and circumstances of each particular transaction,*[8] *including the specific type of*

[5] *This interpretation does not address the application of the mark-up policy to transactions involving the domination and control of the market for a particular security. When a dealer dominates and controls the market for a particular security, that dealer's contemporaneous cost is the best evidence of the prevailing market price. The analysis of whether the market for any particular security is dominated or controlled should take into account the extent to which the particular security is fungible with other similar securities.*

[6] *A mark-up is the difference between the price that the dealer, acting as a principal, charged to the customer and the prevailing market price for the security. Lehman Brothers Inc., Exchange Act Release No. 37673 (Sept. 12, 1996). A mark-down is the difference between the price that the dealer, acting as principal, paid to the customer and the prevailing market price for the security.*

[7] *Rules for municipal securities are promulgated by the Municipal Securities Rulemaking Board.*

[8] *Whether the amount of mark-ups charged on a particular transaction is excessive depends on whether, based on all the relevant facts and circumstances, the price charged the customer is reasonably related to the prevailing inter-dealer*

Continued