

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-24950 Filed 10-1-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48540; File No. SR-CBOE-2003-31]

### Self-Regulatory Organizations; Notice of Filing and Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

September 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. 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

CBOE proposes to amend certain non-option listing rules of the Exchange in response to the adoption of Rule 10A-3 of the Exchange Act.<sup>3</sup> Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

#### Rule 31.7 Securities of Foreign Issuers

(1) No change.

(2) The Exchange will consider the law, and commercial and business practice of the applicant's domicile in evaluating (A) the election and composition of its Board of Directors, *to the extent such law, and commercial and business practice with respect to the election and composition of its Board of Directors is consistent with the federal securities laws, including, but not limited to, Rule 10A-3 of the Securities Exchange Act of 1934, as*

*amended*, (B) shareholder approval and quorum requirements for meetings, and (C) the issuance of quarterly earnings statements.

(3)-(5) No change.

#### Rule 31.10 Independent Directors

The Exchange requires an issuer to have at least two independent directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The issuer shall maintain an audit committee (i) composed of such independent directors[.] *and (ii) that complies with the listing standards set forth in Rule 10A-3 of the Securities Exchange Act of 1934, as amended ("Exchange Act"). If a member of the audit committee ceases to be independent in accordance with the requirements of Exchange Act Rule 10A-3 for reasons outside the member's reasonable control, that person, with written notice to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.*

#### Rule 31.94 Suspension and Delisting Policies

(A)-(I) No change.

#### \* \* \* Interpretations and Policies

.01 *With respect to an issuer that does not comply with the requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended, as set forth in Rule 31.10, the Exchange shall remove from listing the securities of such issuer.*

#### Rule 31.96 Notices to Exchange

(A) No change.

(B) Changes in Officers or Directors.

A listed company is required to notify the Exchange promptly (and confirm in writing) (i) of any changes of officers or directors and (ii) *after an executive officer of the listed company becomes aware of any material noncompliance by the listed company with the requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended.*

(C)-(G) No change.

*Rule 31.97 [Reserved for additional original listing standards.]*

\* \* \* \* \*

#### Forms for Listing

\* \* \* \* \*

#### Form 1

\* \* \* \* \*

#### Listing Agreement

\_\_\_\_\_ (the "Company"), in consideration of the listing of its securities, hereby agrees with the Chicago Board Options Exchange, Incorporated (the "Exchange"), that it will:

1. Promptly notify the Exchange of the following:

(a) changes in the general character or nature of its business, its principal executive officers, directors, its independent public accountants, its transfer agent or registrar *and material noncompliance by the listed company with Rule 10A-3 of the Securities Exchange Act of 1934, as amended ("Exchange Act")*, after an executive officer becomes aware of such noncompliance;

(b)-(k) No change.

(2)-(27) No change.

(28) Comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time *and with the requirements of Exchange Act Rule 10A-3.*

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. 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

##### 1. Purpose

Exchange Act Rule 10A-3(a)(1) provides that the "rules of each national securities exchange registered pursuant to section 6 of the [Exchange] Act (15 U.S.C. 78f) must, in accordance with the provisions of [Exchange Act Rule 10A-3], prohibit the initial or continued listing of any security of an issuer that

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.10A-3. See Securities Exchange Act Release No. 47137 (January 8, 2003) 68 FR \_\_\_\_\_ (date).