

is not in compliance with the requirements of any portion of paragraph (b) or (c) of [Exchange Act Rule 10A-3].” Exchange Act Rule 10A-3(b) contains new requirements for an issuer’s audit committee and Exchange Act Rule 10A-3(c) provides general exemptions from the requirements of Exchange Act Rule 10A-3. Exchange Act Rule 10A-3(a)(5)(ii) requires CBOE to propose new rules or rule amendments that comply with Exchange Act Rule 10A-3 no later than July 15, 2003.

CBOE Rules 31.5—31.16 contain the criteria for the original listing of an applicant’s non-option securities on CBOE. In particular, CBOE Rule 31.7 provides that with respect to foreign issuers, CBOE will consider the law, and commercial and business practice of the foreign issuer’s domicile in evaluating the election and composition of the foreign issuer’s Board of Directors. CBOE proposes to add a proviso that makes clear CBOE’s intention to consider the law, and commercial and business practice of the foreign issuer’s domicile only if such law and practices are consistent with federal securities laws, including Exchange Act Rule 10A-3. CBOE also proposes to amend another original listing criterion, CBOE Rule 31.10, which currently provides in part that “the issuer shall maintain an audit committee composed of \* \* \* independent directors.” To comply with Exchange Act Rule 10A-3, CBOE proposes to amend the quoted language above in CBOE Rule 31.10 by incorporating by reference the listing standards set forth in Exchange Act Rule 10A-3. Specifically, the proposed language in CBOE Rule 31.10 provides in part that “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.” CBOE proposes to amend the listing agreement on CBOE Form 1 so that it conforms to the proposed language set forth above in CBOE Rule 31.10. Proposed CBOE Rule 31.10 also incorporates the language set forth in Exchange Act Rule 10A-3(a)(3) to satisfy the requirement that CBOE provides appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for the prohibition of listing the securities of such issuer under Exchange Act Rule 10A-3(a).

CBOE proposes to add an interpretation to CBOE Rule 31.94 that revises one of CBOE’s delisting policies in order to comply with Exchange Act

Rule 10A-3. The revision is required because CBOE Rule 31.94(B)(d) currently permits CBOE’s Board of Directors to use its discretion in deciding whether to delist an issuer’s non-option securities from trading when, in the opinion of CBOE, “the issuer has failed to comply with its listing agreements” with CBOE. Exchange Act Rule 10A-3(a)(1) makes clear that an exchange may not use discretion in deciding whether to delist a non-option security of an issuer that does not comply with Exchange Act Rule 10A-3.

Exchange Act Rule 10A-3(a)(4) provides that the rules required by Exchange Act Rule 10A-3(a)(1) and (2) must include a requirement that a listed issuer must notify CBOE promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Exchange Act Rule 10A-3. Proposed Rule 31.96(B) and the listing agreement on CBOE Form 1 are amended to reflect this requirement.

The proposed rule change reserves a new rule, proposed CBOE Rule 31.97, to incorporate additional and enhanced original listing standards for the listing of non-option securities on the Exchange. CBOE understands that the National Association of Securities Dealers, Inc. (“NASD”) and the New York Stock Exchange, Inc. (“NYSE”) have filed rule proposals with the Commission that strengthen their listing standards by enhancing corporate governance requirements for listed entities.<sup>4</sup> Following the Commission’s approval of these rule proposals, CBOE intends to submit a rule proposal to the Commission to adopt substantially similar changes to CBOE’s original listing rules. For example, consistent with the listing standards that are adopted by NYSE and/or NASD, CBOE intends to revise its original listing rules to, among other things, further address (i) independent director representation on the issuer’s Board of Directors; (ii) independent director representation on the issuer’s nominating and compensation committees; (iii) shareholder approval requirements of equity-compensation plans, (iv) corporate governance guidelines of issuers; (v) issuer codes of business conduct and ethics; and (vi) the definition of “independent” that is

currently provided for in CBOE Rule 31.10.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Exchange Act,<sup>6</sup> in particular, in that it should promote just and equitable principles of trade, serve to 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*

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 Exchange Act.

### *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 with respect to the proposed rule change.

## 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 self-regulatory organization consents, the Commission will:

(A) By order approve such 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 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

<sup>4</sup> See Securities Exchange Act Release No. 34-47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (noticing SR-NASD-2002-141) and Securities Exchange Act Release No. 34-47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (noticing SR-NYSE-2002-33).

<sup>5</sup> 15 U.S.C. 78ff(b).

<sup>6</sup> 15 U.S.C. 78ff(b)(5).