

Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. This Order approves the proposed rule change in part as set forth below, so that the CHX can comply with this deadline. This Order also provides notice of Amendment No. 1 and approves Amendment No. 1 on an accelerated basis. The Commission notes that the CHX is considering revisions to the portions of the proposed rule change that pertain to corporate governance standards other than the revisions to comply with Rule 10A-3 requirements, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.<sup>7</sup> This Order does not relate to those other proposed provisions except to the extent indicated below.

## II. Description of the Approved Changes

The Commission is approving in this Order the portions of the proposed rule change that: (a) Implement Rule 10A-3; and (b) amend CHX's maintenance standards as set forth in the rule text that follows.<sup>8</sup> The Commission also is approving an additional provision, included in the text set forth below, relating to complaint procedures of audit committees of investment companies. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed

to the Commission's Rule 10A-3 requirements for listed company audit committees; and (b) the sections that set out a process that would provide an issuer with a specific opportunity to cure any failure to meet the Exchange's maintenance standards, including its governance-related standards. In addition, the Exchange proposed in Amendment No. 1 an additional section of rule text in CHX Rule 19(b)(2) to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. In the amendment, CHX set forth the text of the proposed rule change for which it is seeking approval at this time, which is set forth in Section II. below.

<sup>7</sup> See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141) ("NYSE/NASD Corporate Governance Release"). Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 18, 2003.

<sup>8</sup> The text set forth below also includes several minor changes to the text set forth in the Notice to reflect the fact that the Commission is approving portions of the proposed rule amendments.

issuer of concerns regarding questionable accounting or auditing matters."<sup>9</sup> The additional provision will require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

The following is the proposed rule text that the Commission is approving, as set forth by CHX in Amendment No. 1. Proposed new language is in *italics*; proposed deletions are in brackets.

### Chicago Stock Exchange Rules

#### ARTICLE XXVIII

##### Listed Securities

\* \* \* \* \*

\* \* \* \* \*

##### Maintenance Standards Applicable to All Tier I Issues

RULE 17A. The Exchange reserves the right to delist the securities of any corporation, subject to 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. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading, or failure to comply with required corporate governance standards.

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

*If the Exchange identifies a Tier I issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter*

*of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the "Plan") to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.*

*The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A-3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.*

*If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A-3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A-3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at*

<sup>9</sup> 17 CFR 240.10A-3(b)(3)(iii).