

registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On February 20, 2002, the Board of Directors ("Board") of the Issuer adopted resolutions to terminate the listing of its Security on the Amex and to list its Security on the New York Stock Exchange, Inc. ("NYSE"), effective April 30, 2002. The Issuer stated that the Board took such action in order to avoid the direct and indirect cost and the division of the market resulting from dual listing on the Amex and NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE under section 12(b) of the Act.³

Any interested person may, on or before May 2, 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 NYSE 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. 02-9478 Filed 4-17-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Chicago Stock Exchange, Inc. (BIOQUAL, Inc., Common Stock, \$.01 par Value) File No. 1-13527

April 12, 2002.

BIOQUAL, Inc., a Delaware 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, \$.01 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Issuer states in its application that it has met the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration. In making the decision to withdraw the Security from listing and registration on the CHX, the Issuer considered (i) the cost associated with maintaining such listing and (ii) the Security's low trading volume. The Issuer determined that the benefits of continued listing of the Security on the Exchange did not justify the expense of maintaining such listing. Issuer stated that the Security is currently quoted on the OTC Bulletin Board.

The Issuer's application relates solely to the Security's withdrawal from listing on the CHX and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before May 2, 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 CHX 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.⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45744; File No. SR-CHX-2000-08]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change, to Establish a Board Review Process for Decisions of the Exchange's Committee on Specialist Assignment and Evaluation Regarding Specialist Firm Consolidations

April 12, 2002.

I. Introduction

On March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending CHX Article XXX, Rule 1, Interpretation .01, to establish a review process for certain decisions of the Exchange's Committee on Specialist Assignment and Evaluation ("Committee"). On April 3, 2000, the Exchange amended the proposal.³ The proposed rule change, along with Amendment No. 1, was published for comment in the **Federal Register** on July 12, 2000.⁴ The Commission received two comment letters on the proposal.⁵ The CHX submitted a letter in response to these comments.⁶ On September 7, 2001, the CHX again amended the proposal.⁷ This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 31, 2000 letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, the CHX made minor, technical changes to the proposal.

⁴ See Securities Exchange Act Release No. 43010 (July 5, 2001), 65 FR 43066.

⁵ See October 6, 2000 letter from Gerald M. Miller, Vanasco Genelly & Miller, on behalf of Chicago Securities Group Limited Partnership, to Jonathan G. Katz, Secretary, SEC ("Vanasco letter"); October 6, 2000 letter from Dempsey & Company LLC (representing five specialist units on the CHX) to Jonathan G. Katz, Secretary, SEC ("Dempsey letter").

⁶ See November 24, 2000 letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), SEC.

⁷ See August 31, 2001 letter from Paul B. O'Kelly, Chief Operating Officer, CHX, to Joseph P. Morra, Special Counsel, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the CHX (i) clarified that the proposed rule change was not submitted as a

³ 15 U.S.C. 781(b).

⁴ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

⁵ 17 CFR 200.30-3(a)(1).

order approves the proposed rule change as amended by Amendment Nos. 1 and 2. The Commission has found good cause to approve Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend its rules to add "consolidations" to the list of circumstances that may lead to the need for assignment or reassignment of a security, and establish a review process for certain Committee decisions. Specifically, the Exchange proposes an amendment to CHX Article XXX, Rule 1, Interpretation .01.

The Committee currently is charged with approving the assignment of stocks to specialist firms and their co-specialists, as well as evaluating the performance of such specialists and co-specialists. The Committee also reviews and must approve the transfers of assigned issues that typically occur in connection with the acquisitions of specialist firms by other specialist firms.

The CHX reports it is experiencing significant consolidation of its specialist firms. The Exchange's Board of Governors ("Board") believes that specialist firm consolidations and the concentration of business that can result from these consolidations can raise issues that are significant in the context of the Exchange's long-term business plan and operational forecasts. According to the CHX, these issues are beyond those typically addressed by the Committee in the ordinary stock allocation process. The CHX has determined that it is both appropriate and necessary for the Board to review Committee decisions that raise the broader issues referenced above. Accordingly, the CHX proposes a procedure for discretionary, and in certain cases, mandatory Board review and approval of stock assignment transfers in the case of specialist firm consolidations, and for discretionary authority to review and approve

result of any pre-judgment about the consequences of concentration among specialist firms; rather, the proposed rule reflects the CHX's view that concentration of specialist firms may create broader risks to the Exchange; (ii) clarified that the Committee does not consider a member firm's activities in other market centers (other than trading in the issue to be assigned) when it assigns stocks, except to the extent such activity is relevant to the Committee's overall assessment of the firm's risk controls and procedures; (iii) clarified that information provided to the CHX staff, the Committee, and the Exchange's Board of Governors, will be kept confidential; (iv) clarified that specialists and affiliates of specialists cannot sit on the Committee or that Board panels that will review Committee decisions will not involve specialists or their affiliates; and (v) made minor changes to the proposed rule language to clarify the intent of the proposal, and to incorporate certain changes suggested by the commenters.

transfers of assigned stocks in circumstances where there is a change in control of a specialist firm.

Under the proposal, the Committee will continue to review transfers of assigned stocks in connection with specialist firm consolidations or changes in control of specialist firms, subject to new review procedures. The proposal would add consolidations to the current list of events leading to assignment proceedings.⁸

The proposed rule sets forth certain factors the Committee must consider when the consolidation creates concentration. Concentration occurs when a consolidation creates or increases a specialist unit's financial interest in trades constituting 10% or more of the total CHX trade volume in the three preceding calendar months.⁹ Under the proposal, the full Board of Governors, excluding those Governors that are co-specialists or affiliates of specialists or co-specialists (a "Board Panel") may on its own initiative review any Committee decision involving a change in control or consolidation of a specialist unit. The Board Panel must give any interested member an opportunity to present its views on the matter. Committee decisions will be final if any member of a Board Panel does not request that the Board Panel initiate a review within ten days of a Committee decision. However, a Board Panel must review all Committee decisions made with respect to consolidations that create concentration. Board Panel decisions, and the basis for those decisions, must be in writing and communicated to the specialist.

III. Summary of Comments

The Commission received two comments on the proposal,¹⁰ both of which objected to the Commission approving the proposed rule change. As

⁸ There are currently seven circumstances under which the Committee may assign or reassign a security: (i) New listing or obtaining unlisted trading privilege; (ii) specialist request; (iii) corporation request; (iv) split-up and/or merger of specialist units; (v) fundamental change in specialist unit; (vi) unsatisfactory performance action; or (vii) disciplinary action.

⁹ When a consolidation creates concentration, the Committee will consider (i) the effect of the consolidation on the specialist units' capital supporting specialist activities, experience and quality of management, experience and performance of co-specialists, risk controls and procedures, and operational efficiencies; and (ii) the effect of the consolidation on the CHX's ability to enhance its position as a market center by promoting competition among members, minimize risk to the financial integrity of the marketplace, and continue operating in the public interest by enhancing market quality and public awareness of the products and services offered through the CHX.

¹⁰ See footnote 5, *supra*.

discussed below, the CHX responded to these comments.¹¹

Unnecessary Burden On Competition. The commenters believe the proposal would impose significant burdens on the ability of specialists to compete with over-the-counter market makers.¹² The commenters believe that consolidation of specialist firms on the CHX floor provides a broader range of stocks to the firm, and permits the aggregation of greater capital than would be possible by smaller firms, which helps them to compete with third market makers.¹³ By limiting the ability of specialist firms to consolidate, the commenters believe the proposal places an unnecessary burden on competition by limiting the ability of specialists to expand their businesses in order to effectively compete, and perhaps placing restrictions on the transfer of a business.¹⁴

Appealability. The commenters object to language in the proposal that would make decisions by the Committee or the Board "final."¹⁵ The commenters believe that, when an exchange takes an action that restricts access to the exchange's market, the action must provide for due process, by way of an appeal to the SEC.¹⁶ The commenters asked that the CHX make clear that "final" judgments about the allocation of stocks are appealable to the Commission.¹⁷

Disclosure Of Confidential Information. The commenters expressed concern that specialists would be required to disclose detailed financial information to the Committee, and possibly to the Board. Because the disclosure of confidential financial information has the potential to harm specialist units, the commenters asked that the CHX delineate procedures to prevent further disclosure of confidential information or to eliminate potential competitors from serving on the Board.¹⁸ Further, the Dempsey letter stated that the proposal should be amended to limit the scope of information available for review to information related to the specified factors in the rule. This would address concerns, in the commenter's view, that the Committee could request

¹¹ See footnote 6, *supra*. As noted in footnote 6, and discussed in more detail herein, some of the changes proposed in Amendment No. 2 were made in response to the comments.

¹² Vanasco letter at 1; Dempsey letter at 1-2.

¹³ Vanasco letter at 2.

¹⁴ Vanasco letter at 2; Dempsey letter at 2.

¹⁵ Vanasco letter at 2-3; Dempsey letter at 3.

¹⁶ *Id.*

¹⁷ Vanasco letter at 3; Dempsey letter at 3.

¹⁸ Vanasco letter at 3; Dempsey letter at 3-4.

confidential information outside the scope of review.

Miscellaneous Ambiguities. The commenters asked that the CHX clarify the following ambiguities:

(i) The current rules provide for two types of business changes that would require assignment proceedings—a split up and/or merger of a specialist unit, and a fundamental change of a specialist unit. While the current rules do not define “fundamental change,” they provide examples of actions that would or would not be considered a fundamental change. The proposal would add “consolidation” to the rule. The commenters note that, unlike a split up, merger, or fundamental change that result only from ownership changes, a consolidation could arise from contractual arrangements that do not result from ownership changes. The proposal does not explain why a change in or creation of a non-ownership financial interest should require Committee approval.¹⁹

(ii) The filing is unclear as to whether any consolidation would require a posting, or whether a consolidation would require posting *only* when it would result in a specialist unit having a financial interest in trades constituting 10% or more of the CHX’s total volume in the three preceding calendar months (“concentration”).²⁰

(iii) The current rule requires a posting only when there is an ownership change that results in a change of control. The proposed rule would require a posting when two specialists come under common control. Thus, the mere combination of control would be a triggering event. However, the commenter states the proposed rule would not require a posting when there is a change in control as long as the new controlling person did not control another specialist.²¹ The commenter believes this conflicts with the basic intent of the rule which is to allow for transfer of books.

(iv) The filing is unclear if the CHX intends to restrict the participation of affiliates of specialists (as opposed to co-specialists) from the Board Panel.²² The CHX currently defines a co-specialist as an individual trading stock on the floor of the CHX on behalf of a specialist firm. The commenter believes the CHX should restrict participation of the affiliates of specialists as well.

CHX’s Response To Comments. The CHX offered the following in response to the comment letters:²³

(i) *Effect on Competition:* While the commenters believe the proposed rule will hinder their ability to compete with over-the-counter market makers, the CHX notes that Exchange members are subject to a number of rules that are not imposed upon their competitors in other markets, while their competitors are subject to other rules that are not imposed on Exchange specialists. The CHX believes it has an interest in assuring that the process of assigning stocks to specialist units is fair to all specialist firms, and that awards are made and transfer requests granted while taking into account the best interests of the CHX. In this context, the CHX believes consolidation can have a substantial positive or negative impact on the surviving firm or its ability to perform specialist functions. The CHX believes the proposed rule will assist in achieving what is best for the Exchange, and that the process is not unfairly discriminatory or burdensome on competition.²⁴

(ii) *Confidential Information.* The CHX states that it regularly receives confidential information in connection with its SRO responsibilities and it does not believe this proposal is any different in terms of maintaining confidentiality. The CHX asserts that the Committee and the Board will not contain individuals that are affiliated with co-specialists or specialist firms. These restrictions should allay the commenters’ concern that competitors acting in an official capacity might gain access to another specialist firm’s proprietary information.²⁵

(iii) *Appealability.* While the proposed rule language states that the Board’s decision is final, the CHX clarifies that the reference to finality in the proposal is to emphasize only that the Board Panel’s decision is not subject to full Board review.²⁶ The CHX notes that appealability of an action to the Commission would be governed by the Act and rules thereunder, not CHX’s rules.

(iv) *Miscellaneous Ambiguities.* In response to the commenters’ objection to the definition of “consolidation” in the proposed rule including arrangements that do not involve a change in ownership interests among the affected specialist firms, the CHX

explains that the definition has been expanded to include such arrangements because of the possibility that specialist firms can transfer virtually all or part of their economic interests in assigned stocks to other specialist firms without changing the ownership interest in either specialist. The CHX believes the Committee should be able to reconsider the basis for an assignment if an applicant proposes to transfer some or all of its interest in or responsibility for an assigned stock to another specialist, even if the consolidation does not result in a change in ownership interests among the affected specialist firm.²⁷

(v) The CHX agrees that proposed item 6 (“Consolidations creating Concentration”) under “I. EVENTS LEADING TO ASSIGNMENT PROCEEDINGS” should be changed to “Consolidations” to avoid confusion.²⁸

(vi) The CHX agrees to modify “II. ASSIGNMENT PROCEDURES” item 4 (“Board Review”) to include affiliates of specialists as well as affiliates of co-specialists.²⁹

IV. Discussion and Commission Findings

The Commission has reviewed carefully the CHX’s proposed rule change, as amended, the comment letters, and the CHX’s response to the comments, and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,³⁰ and, in particular, with the requirements of Section 6(b).³¹

The Commission does not believe that consolidations among specialist units are inherently harmful, and believes that in many situations they can, in fact, be beneficial, particularly for those units with limited capital. Nevertheless, the Commission recognizes that undue concentration can have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.

The Commission believes that the factors identified in the CHX policy for reviewing specialist combinations are reasonably designed to result in approval of proposed combinations that will not have an adverse impact on market quality or result in undue concentration. The Commission notes that the CHX’s proposal would not

²³ See footnote 6, *supra*. See also Amendment No. 2.

²⁴ *Id.*

²⁵ *Id.* Amendment No. 2 amends the rule to make clear that affiliates of co-specialists, as well as specialists, cannot be on the reviewing Board Panel.

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ See Amendment No. 2.

²⁹ *Id.*

³⁰ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78f(b).

¹⁹ Vanasco letter at 3; Dempsey letter at 4.

²⁰ Vanasco letter at 3–4; Dempsey letter at 5.

²¹ Vanasco letter at 4.

²² Dempsey letter at 5.

permit the CHX to weigh against a particular firm its activities in other markets, unless the firm is already acting as a specialist in the same issue for which the combination would result in that firm acting as a specialist on the CHX, or to the extent it is relevant to overall firm risk controls and procedures.³² The CHX has amended its filing to reflect that the focus of the review is on improving the quality of markets and services at the Exchange. As noted above, the commenters have argued that the review procedures for a combination resulting in concentration are extraordinary, and such procedures impose an inappropriate burden on competition that does not exist on their third market competitors. However, the Commission finds that the CHX proposal does not impose an unnecessary burden on competition under section 6(b)(8) of the Act³³ because it establishes review procedures that are intended to prevent undue concentration that could potentially hinder market quality.

Indeed, the CHX has stated that, while its filing reflects the Board's recognition of the risks from greater concentration, it has not made any prejudgments on whether the Exchange is benefited or harmed by consolidation among specialist units. Although the Commission recognizes that the new rules could result in prohibiting a combination from occurring, the Commission finds the factors for consideration in reviewing concentration effects, such as adequate capital, risk controls, and operational efficiencies, are related to legitimate market quality issues which the CHX should be permitted to weigh. Amendment No. 2 also has made clear that competition from other markets will not be considered a factor in a consolidation review. Accordingly, while the proposed rule language states that the Exchange can consider the effect of the consolidation on the Exchange's ability to enhance its position as a market center by promoting competition among members, this factor could not be used in an anticompetitive manner to deny a consolidation because of a specialist's presence in another market. Thus, a firm's decision to route customer orders to another market for different issues, or to make markets on another exchange in different issues, would be irrelevant to the CHX's review.

In addition, as a result of concerns raised by the commenters, the CHX made several changes to the proposal.

For example, the commenters raised concerns regarding the confidentiality of information provided to the Committee or Board Panel in connection with reviews. The CHX amended the proposal to clarify that information provided to CHX staff, the Committee, and the Board Panel will be kept confidential, and that members that are specialists or affiliates may not sit on the Committee. Similarly, Board Panels that review Committee decisions will not include specialists or their affiliates. Additionally, the CHX, in response to concerns raised by the commenters that a specialist's activities in other market centers might be used in an anticompetitive manner to prevent consolidation, clarified that the Committee will not consider a member firm's activities in other market centers when it assigns stocks except to the extent that such activity is relevant to the Committee's overall assessment of the firm's risk controls and procedures. The Commission notes that all Board Panel decisions, and the basis for those decisions, must be in writing, and must be communicated to the specialist. With regard to any remaining issues raised by the commenters, the Commission is satisfied that the CHX has adequately addressed those comments.

In summary, the Commission believes the CHX proposal balances competing concerns of its market and allows it to consider the effect of a consolidation resulting in concentration on market quality. The Commission believes this is an appropriate goal and that the rules should not be used, or applied, in an anti-competitive manner.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the CHX's position on a number of issues raised by the commenters. The Commission finds no legitimate reason to delay approval of proposed Amendment No. 2, given that Amendment No. 2 is responsive to the commenters' concerns. For these reasons, the Commission finds good cause for accelerating approval of proposed Amendment No. 2.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Amendment No. 2, including whether Amendment No. 2 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 such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2000-08 and should be submitted by May 9, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-CHX-2000-08), as amended by Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45736; File No. SR-NASD-2002-11]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to NASD Rule 2260 To Require Members To Make Reasonable Efforts To Forward Issuer and Trustee Communications to Beneficial Holders of Non-Municipal Debt Securities

April 11, 2002.

On January 17, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 2260 of the rules of the NASD to require a member to make reasonable efforts to forward a

³² See Amendment No. 2.

³³ 15 U.S.C. 78f(b)(8).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.