

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-25]

### Foster Wheeler Environmental Corporation; Idaho Spent Fuel Facility; Notice of Order Approving Indirect Transfer of Materials License

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Issuance of Order Approving Indirect Transfer of Materials License No. SNM-2512.

#### FOR FURTHER INFORMATION, CONTACT:

Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492-3284; *fax number:* (301) 492-3348; *e-mail:* [shana.helton@nrc.gov](mailto:shana.helton@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I

Foster Wheeler Environmental Corporation (FWENC) is the holder of Special Nuclear Materials (SNM) License No. 2512, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 72. The license authorizes FWENC to construct and operate the Idaho Spent Fuel (ISF) Facility in accordance with the terms and conditions specified therein. The yet-to-be constructed ISF Facility is an independent spent fuel storage installation, which, if constructed, will be located adjacent to the Department of Energy's Idaho Nuclear Technology and Engineering Center site on the Idaho National Laboratory grounds in Idaho.

##### II

By letter dated December 11, 2008, as supplemented on December 22, 2008 (Agencywide Documents Access and Management System Accession Nos. ML083500374 and ML083640311, respectively), FWENC submitted an application seeking consent to the indirect transfer of control of SNM License No. 2512 for the ISF Facility.

The indirect transfer of control of FWENC's license would result from a planned restructuring whereby Foster Wheeler AG will become the new ultimate corporate parent holding company of FWENC, replacing Foster Wheeler Ltd, the current ultimate parent holding company. The shares of Foster Wheeler Ltd., a corporation duly organized under the laws of Bermuda, are widely held and publicly traded in

the United States on the NASDAQ Global Select Market. The proposed new ultimate parent holding company, Foster Wheeler AG, is a corporation duly organized under the laws of Switzerland, and it is currently a wholly owned subsidiary of Foster Wheeler Ltd.

No physical changes to the planned ISF Facility were proposed in the application. FWENC will still be authorized to construct and operate the ISF Facility, notwithstanding the proposed corporate restructuring, and will continue to hold the license. No direct transfer of the license will result from the planned restructuring.

Approval of the application was requested pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 72.50. Notice of the application and an opportunity for a hearing was published in the **Federal Register** on December 29, 2008 (73 FR 79518). No hearing requests or written comments were received.

Under 10 CFR 72.50, no license or any part included in a license issued under 10 CFR Part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring as described above will not affect the qualifications of FWENC as holder of SNM License No. 2512, and that the indirect transfer of control of the license, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of the law, and the regulations and orders issued by the Commission. These findings are supported by a Safety Evaluation of the same date as this Order.

##### III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 72.50, *it is hereby ordered* that the application regarding the indirect license transfer described above related to the proposed corporate restructuring and establishment of Foster Wheeler AG as the new ultimate parent holding company of FWENC is approved, subject to the following condition:

Should the proposed corporate restructuring and establishment of Foster Wheeler AG as the new ultimate corporate parent holding company not be completed within one year from the date of this Order,

this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 11, 2008, as supplemented by letter dated December 22, 2008, and the NRC's safety evaluation dated January 29, 2009 (ADAMS Accession Nos. ML083500374, ML083640311, and ML090220068, respectively). These documents are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 29th day of January 2009.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9-2712 Filed 2-9-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of BIH Corporation; Order of Suspension of Trading

February 6, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BIH Corporation ("BIH") because of questions regarding the accuracy of assertions by BIH in its Web site and in press releases to investors concerning, among other things: (1) The identity of the person or persons in control of the operation and management of the company, and (2) contracts entered into by one of BIH's subsidiaries.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange

Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on February 6, 2009, through 11:59 p.m. EST, on February 20, 2009.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E9-2918 Filed 2-6-09; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59355; File No. SR-CBOE-2009-004]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 30, 2009, the Chicago Board Options Exchange, Incorporated 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

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

##### (a) Purpose

In October 2008, the Exchange filed a proposed rule change to eliminate Registered Representative Fees and establish a transaction-based "Options Regulatory Fee" to become effective on January 1, 2009 ("ORF").<sup>3</sup> In December 2008, the Exchange filed a proposed rule change to waive the fee until February 1, 2009, to allow additional time for the Exchange and OCC to implement the procedures to be used by OCC to bill and collect the ORF.<sup>4</sup>

The Exchange proposes to again waive the ORF until March 1, 2009. The Exchange is waiving the ORF to provide firms time to put in place appropriate procedures to implement the fee.

The Exchange notes that it is also in the process of evaluating the amount of the ORF to ensure that it does not experience a regulatory revenue shortfall as the result of the waiver of the ORF for the first two months of 2009. If the Exchange determines to change the ORF rate, it will file a proposed rule change and provide members with notice of the rate change as far in advance of March 1, 2009 as possible.

##### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes it is appropriate to waive the ORF for February 2009 to allow firms additional time to put in place

appropriate procedures to implement the fee.

#### 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 that is not necessary or appropriate in furtherance of purposes of the 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-004 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008). The ORF is \$.0045 per contract and is assessed to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (i.e., that clear in a customer account at OCC), excluding Options Intermarket Linkage Plan ("Linkage") orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 59182 (December 30, 2008).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).