

allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

37. The proposed substitution is not the type of substitution that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which section 26(c) was designed to prevent.

38. The proposed substitution also is unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

39. Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion:

Applicants assert that, for the reasons stated above, the requested order approving the Substitution should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47613; File No. SR-Amex-2003-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on March 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. 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

The Exchange proposes to amend its initial listing guidelines in Commentary .01 and .05(d)(ii) to Amex rule 915 to allow options to be listed on "covered securities," when, among other things, the trading price of the underlying security was at least \$3 for the five business days prior to certification with The Options Clearing Corporation ("OCC"). The text of the proposed rule change follows. Additions are in *italics*. Deleted text is in [brackets].

* * * * *

Rule 915. Criteria for Underlying Securities

- (a) No Change
- (b) No Change

Commentaries

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

- 1. No Change
- 2. No Change

3. No Change

4. (a) *If the underlying security is a "Covered Security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

(b) *If the underlying security is not a "Covered Security," [E]ither (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii) (a) the underlying security meets the guidelines for continued listing in rule 916; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.*

5. No Change

.02-.04 No Change

.05 (a)-(c) No Change

(d) In the case of a restructuring transaction that satisfies either or both of the conditions of subparagraph (a) above in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution;

(i) No Change

(ii) the Exchange may certify that the market price of the Restructured Security satisfies guideline 4 of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the Restructured Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructured Security was at least \$7.50, *or if the Restructured Security is a "Covered Security," as defined in Commentary .01(4) to rule 915, the market price of the Restructured Security was at least \$3.00; and*

(iii) No Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.