

.06-.09 No Change

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

In its filing with the Commission, the Exchange 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 III below. The Exchange 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

1. Purpose

The Exchange proposes to amend its pricing requirement for underlying securities. Currently, Commentary .01(4) to Amex rule 915 provides that either (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 or (ii) the underlying security meets the guidelines for continued listing in Amex rule 916, options on such underlying security are traded on at least one other registered national securities exchange and 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.

The Exchange now proposes to amend Commentary .01(4) to Amex rule 915 to provide that, for underlying securities that are "Covered Securities," as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),³ the closing market price of the underlying security must be at least \$3 per share for the five previous consecutive business days prior to the date on which the Amex submits an

option class certification to OCC.⁴ Underlying securities that are not "Covered Securities" will continue to be subject to the Exchange's current \$ 7.50 price per share requirement found in Commentary .01 to Amex rule 915.⁵

The proposed rule change is identical to a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to revise its initial listing standards that was recently approved by the Commission and became effective on January 15, 2003.⁶ In addition, the International Securities Exchange, Inc. ("ISE") has also proposed to match the CBOE amendment to options initial listing standards.⁷ The Exchange seeks to amend its initial options listing guidelines in order to be consistent with both the CBOE and ISE so that the Amex is not placed at a competitive disadvantage with respect to the option classes that it may list. The Exchange further does not believe that this particular options initial listing guideline serves to accomplish its intended purpose of preventing the proliferation of option classes on overlying securities that lack adequate liquidity to maintain fair and orderly markets.

The Exchange believes that changing the initial price guideline to the proposed \$3 market price per share for "covered securities" would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection based on the economic realities of its customers and the marketplace. In determining to list new option classes, the Exchange also must ensure that its own systems and those of the Options Price Reporting Authority ("OPRA") have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed \$3 market price per share standard is also consistent with the guideline price in Exchange rule 916 for determining whether an underlying security previously approved for Exchange options transactions can continue to underlie options trading.⁸ Commentary .01(4) and .02 to Amex

rule 916 sets a \$3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under rule 915. Accordingly, the Exchange believes that the proposed \$3 market price per share for "covered securities" should also be the threshold standard for the initial listing as well.

Consistent with both the CBOE and ISE proposals, the Exchange, as a safeguard against price manipulation, has proposed that the underlying security have a closing market price of at least \$3 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to OCC for listing and trading. The Exchange believes that the proposed "look back" period of five consecutive trading days provides a sufficient measure of protection from attempts to manipulate the market price of the underlying security. The proposed \$3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's quarterly delisting program,⁹ would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within Amex rules, the Exchange proposes to also amend Commentary .04(d)(ii) to Amex rule 915 in connection with Restructured Securities. Commentary .04(d)(ii) to Amex rule 915 currently provides a method to certify that the market price of a Restructured Security satisfies the pricing requirement of Commentary .01(4) to Amex rule 915 referencing the \$7.50 market price per share requirement. In order to make Commentary .04(d)(ii) Amex rule 915 consistent with the pricing guideline change to Commentary .01(4) of Amex rule 915, the amended rule reflects the reduction of the market price from \$7.50 to \$3 as long as the Restructured Security is a "Covered Security."

³ Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * * ." See 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Commentary .01(4) to Amex rule 915 would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. See 15 U.S.C. 77r(b)(1)(B).

⁴ For purposes of this proposal, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. See amended Commentary .01(4) to Amex rule 915.

⁵ The Exchange is not seeking to amend any of the other initial listing guidelines set forth in Commentary .01 to Amex rule 915.

⁶ See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

⁷ See Securities Exchange Act Release No. 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003).

⁸ See Commentary .01(4) and .02 of Amex rule 916.

⁹ The Exchange states that it currently reviews multiply listed option classes, on a quarterly basis, for the purpose of delisting such option classes due to a lack of trading interest. Going forward, the Exchange intends to implement an active delisting program which would require the quarterly delisting of multiply listed option classes that do not trade more than twenty (20) contracts per day on the Exchange.