

designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

#### 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-40 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47862; File No. SR-Amex-2003-38]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

May 14, 2003.

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 May 1,

2003, the American Stock Exchange LLC ("Amex" or "Exchange") 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 the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 Amex proposes to amend Exchange Rule 916, which governs the withdrawal of approval for securities underlying options traded on the Exchange. Below is the text of the proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

Rule 916. Withdrawal of Approval of Underlying Securities  
No Change  
Commentary.

01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, or 3 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of the Securities Exchange Act of 1934.

2. There are fewer than 1,600 holders of the underlying security.

3. The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

4. Subject to Commentary .02 below, the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.

5. The issuer has failed to make timely reports as required by applicable

requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

6. The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

7. If an underlying security is approved for options listing and trading under the provisions of Commentary .05 of Rule 915, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructured Security (as therein defined), including "when issued" trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs 3. and 4. of the Commentary .01 are satisfied, provided however, that in the case of a Restructured Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 915, such trading volume requirements must be satisfied based on the trading volume history of the Restructured Security.

.02-.09 No Change

.10 *In determining whether any of the events specified in Commentary .01(1) or (2) of this Rule have occurred, the Exchange will monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy-backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01 (1) or (2) of this Rule, the Exchange will not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.*

\* \* \* \* \*

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).