

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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Exchange Rule 916 sets forth the 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. Specifically, Commentary .01(1) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if 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 Act ⁴ (the "float" requirement). Commentary .01(2) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 1,600 holders of the underlying security (the "holders" requirement). The Exchange is now proposing to add Commentary .10 to Exchange Rule 916 to clarify the manner in which the Exchange determines whether the "float" and "holders" requirements found in Commentary .01 to Exchange Rule 916 are met.⁵

The Exchange proposes to expressly state that in determining whether any of the events specified in Commentary .01(1) or (2) to Exchange Rule 916 have occurred, the Exchange would 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) to Exchange Rule 916, the Exchange would 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) to Exchange Rule 916 have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act ⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act ⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on

which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,⁹ it has become effective pursuant to section 19(b)(3)(A) of the Act ¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

The Amex has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is the same in all material respects to another proposal submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and recently approved by the Commission.¹² As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.¹³

At any time within 60 days of the filing of this 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. 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

⁹ See e-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 15, 2003.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² See Securities Exchange Act Release No. 47400 (February 25, 2003), 68 FR 10286 (March 4, 2003).

¹³ 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).

⁴ 15 U.S.C. 78p(a).

⁵ Proposed Commentary .10 to Exchange Rule 916 will clarify how the Exchange will determine whether the float of an underlying security is less than 6.3 million shares or the number of holders of the underlying security is fewer than 1,600.

⁶ The Exchange represents that existing Commentary .03 to Exchange Rule 916 would continue to apply when the Exchange considers whether any of the events specified in Commentary .01 have occurred with respect to an underlying security. Specifically, Commentary .03 to Exchange Rule 916 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).