

Likewise, the redemption or withdrawal process for insurance securities products often extends beyond the T+3 time frame. With respect to annuity contracts, the effectiveness of a withdrawal request may be delayed by the need for additional information or instructions from the contract owner with respect to the withholding of proceeds or payments to the Internal Revenue Service. In addition, while the processing of a withdrawal may take place mechanically through the insurer's systems, various circumstances may give rise to additional or preliminary manual processing which can lengthen the withdrawal process.¹² Withdrawals also may require insurers' compliance with applicable IRC provisions or ERISA requirements, as well as various administrative procedures which are relevant only to insurance securities products and not to other securities. Such compliance may demand extra processing time for withdrawals.¹³

The various administrative processes and the requirements under state and federal law which pertain to insurance securities products add complexity and time to the purchase and sale of such securities. These circumstances support the exemption of such securities from the scope of Rule 15c6-1.

Furthermore, permitting a longer settlement cycle for transactions involving insurance securities products does not appear to adversely affect the market risk concerns which the T+3 settlement cycle seeks to address. In adopting Rule 15c6-1, the Commission stated that three day settlement would reduce risk by decreasing the time between trade execution and settlement during which the value of securities

could deteriorate.¹⁴ While insurance securities products are securities, neither the insurance company nor purchaser is subject to the same settlement risks attendant to the purchase of most securities. Moreover, insurance securities products are not traded in secondary market.

Likewise, withdrawal or redemption of an insurance securities product bears less risk to insurers and contract owners. Extensive state regulations exist to ensure that insurers meet their obligations to pay withdrawal proceeds to contract owners. Accordingly, an exemption from Rule 15c6-1 for insurance securities products does not appear to be inconsistent with the purposes of Rule 15c6-1.

The Commission believes that an exemption is appropriate to provide issuers with the time needed to settle transactions involving insurance securities products. Such an exemption should not affect the current regulatory scheme governing insurance securities products, including the relevant sections and rules under the Investment Company Act and the Securities Act pertaining to the purchase and sale of securities issued by insurance companies. Accordingly, the Commission finds that such exemption is consistent with the public interest and the protection of investors.

It is hereby ordered that a contract for the purchase or sale of any security issued by an insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940¹⁵ ("Investment Company Act") that is funded by or participates in a "separate account" as defined in Section 2(a)(37) of the Investment Company Act,¹⁶ including a "variable annuity contract" as defined in Rule 0-1(e)(1) under the Investment Company Act¹⁷ or a "variable life insurance contract" as defined in Rule 6e-2(c)(1) or Rule 6e-3(T)(c)(1) under the Investment Company Act,¹⁸ or any other insurance contract registered as a security under the Securities Act of 1933,¹⁹ shall be exempt from the requirements of Rule 15c6-1.²⁰ This exemption is subject to modification or revocation at any time

the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

For the Commission by the Division of Market Regulation pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35805; International Series Release No. 816; File No. SR-Amex-95-04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On February 8, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("Commission") a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Peso Warrants"). Notice of the proposal appeared in the **Federal Register** on February 17, 1995.³ The Exchange subsequently filed Amendment No. 1 to the proposal on March 16, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 30, 1995.⁴ No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 11, 1995,⁵ and Amendment No.

²¹ 17 CFR 200.30-3(a)(55).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35363 (February 13, 1995, 60 FR 9416).

⁴ In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. See Securities Exchange Act Release No. 35524 (March 22, 1995), 60 FR 16517.

⁵ Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated May 11, 1995 ("Amendment No. 2").

¹² For example, contracts between insurers and contract owners may contain special rights restriction provisions which limit the right to effect withdrawals or impose other restrictions originating from, among other things, a tax lien or divorce decree. Such contracts usually require manual processing which results in delay of the actual processing of the withdrawal.

¹³ Variable annuities, for example, can be used to fund a variety of plans, including tax sheltered annuities, each of which has its own set of complex tax rules regarding withdrawals. Certain variable life insurance contracts may become subject to classification as modified endowment contracts which have taxable predeath distributions. Consequently, some insurers undertake additional examination of withdrawal transactions to determine prior to their completion if the contracts at issue could be classified as a modified endowment contract. Payment of death benefits on variable life insurance contracts and on variable annuity contracts frequently require extended processing time because insurance companies cannot make payments until they receive and review all documentation relevant to the claims and in some instances conduct an investigation of the claims.

¹⁴ Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 [File No. S7-5-93]. The other reasons given by the Commission for the rule's adoption, coordination between the derivative and cash markets and encouragement of greater efficiency in clearing agency and broker-dealer operations, are not applicable to insurance securities products.

¹⁵ 15 U.S.C. 80a-2(a)(17).

¹⁶ 15 U.S.C. 80a-2(a)(37).

¹⁷ 17 CFR 270.0-1(e)(1).

¹⁸ 17 CFR 270.6e-2(c)(1) and 270.6e-3(T)(c)(1).

¹⁹ 15 U.S.C. 77a-77mm.

²⁰ 17 CFR 240.15c6-1 (1994).

3 on May 26, 1995.⁶ This order approves the Amex proposal, as amended by Amendment Nos. 2 and 3.

Pursuant to Section 106 of the Amex Company Guide ("Guide"), the Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of a Peso Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has declined below a pre-stated base level. Conversely, upon exercise, holders of a Peso Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has increased above a pre-stated level. Peso Warrants that are "out-of-the-money" at the time of expiration will expire worthless.

Any issue of Peso Warrants will conform to the listing guidelines under Section 106 of the Guide which provide that: (1) the issuer will have assets in excess of \$100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 101(A) of the Guide; (2) the term of the warrants will be from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be one million warrants, with a minimum of 400 public holders, and an aggregate market value of at least \$4 million.⁷

The Amex will also require that Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange

⁶In Amendment No. 3, discussed herein, the Exchange specified the standards the Amex will use to ensure continued adequate customer margin levels for short positions in Peso Warrants. See Letter from Clair McGarth Managing Director and Special Counsel, Derivative Securities, Amex, to Mike Walinskas, Branch Chief, OMS, Division, Commission, dated May 26, 1995 ("Amendment No. 3").

⁷The Exchange has submitted for Commission approval, proposed rules governing listing requirements, and customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants. See Securities Exchange Act Release No. 35086 (December 12, 1994), 59 FR 65561 (December 20, 1994) (notice of File No. SR-Amex-94-38) ("Generic Warrant Listing Proposal"). If ultimately approved by the Commission, Peso Warrants issued subsequent to that approval will be subject to these rules. These rules, however, will not change the customer margin requirements specified herein. See Amendment no. 2, *supra* note 5.

Rule 921. The suitability standards of Exchange Rule 923 will apply to recommendations for opening transactions in Peso Warrants. Additionally, all discretionary orders in Peso Warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal.⁸

For customer margin purposes, the Exchange will set the customer margin "add-on"⁹ percentage for Peso Warrants at 18% for both initial and maintenance margin, with a minimum add-on for out-of-the-money Peso Warrants of 15%.¹⁰ If, as a result of the Exchange's routine monitoring of margin adequacy (*i.e.*, at least quarterly reviews), the Amex determines that a higher customer margin level would be appropriate, the Amex will take immediate steps to implement the change.¹¹ If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate as a result of the Exchange's periodic reviews, the Exchange will file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Peso Warrants.¹² Anytime that the customer margin levels for Peso Warrants are changes, the Exchange will promptly notify the Exchange's membership and the public.

Prior to the commencement of trading of Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.¹³

The Commission finds that the proposed rule change is consistent with

⁸ See Amex Rule 421, Commentary .02.

⁹ For these purposes, "add-on" is the percentage of the current market value of the Mexican pesos underlying each Peso Warrant that the holder of a "short" position must pay in addition to the current market value of each Peso Warrant.

¹⁰ See Amendment No. 2, *supra* note 5.

¹¹ Prior to increasing the customer margin levels, the Exchange should immediately contact the Commission for a determination as to whether a rule filing pursuant to Section 19(b) of the Act will be required.

¹² Specifically, the Exchange will review, on at least a quarterly basis, the frequency distributions reflecting the percentage price returns for the Mexican peso in relation to the U.S. dollar for all seven day periods during the preceding two year period. If the current margin add-on is not sufficient to cover the least 97.5% of all such seven day price returns, the Exchange will take steps to increase the margin level to one that will cover at least 97.5% of all such instances. See Amendment No. 3, *supra* note 6. In no event, however, will the Exchange reduce the margin levels provided in Amendment No. 2 without the prior approval of the Commission. See Amendment No. 2, *supra* note 5.

¹³ The circular should highlight: (1) the Peso Warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; and (4) the applicable customer margin requirements.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)¹⁴ in that it is designed to protect investors and the public interest. First, the Commission believes that the trading of listed warrants on the Mexican peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Mexican peso in relation to the U.S. dollar. In this regard, Peso Warrants should provide investors with an efficient and effective means of managing risk associated with the Mexican peso.

Second, the Exchange has proposed listing standards to provide for fair and orderly markets in Peso Warrants. Peso Warrants will conform to the listing standards in Section 106 of the Guide, which are similar to the standards pursuant to which currency warrants have previously been listed by the Amex.¹⁵ In addition, the Exchange will limit transactions in Peso Warrants to customers with options approved accounts and impose the Amex's suitability standards and discretionary account standards to transactions in Peso Warrants.

Third, the Exchange has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.*, 18%) provides sufficient coverage to account for historical and potential volatility in the Mexican Peso in relation to the U.S. dollar. In addition, the Exchange must conduct periodic reviews of the volatility in the Mexican peso and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.¹⁶ As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Peso

¹⁴ 15 U.S.C. 78f(b)(5) (1988).

¹⁵ For example, the Amex currently lists currency warrants on the Japanese yen and the German mark. If the Commission approves the Exchange's Generic Warrant Listing Proposal, Peso Warrants listed subsequent to that approval will be subject to the revised listing standards. See Generic Warrant Listing Proposal, *supra* note 7. The Commission notes that to the extent the customer margin requirements contained in the Generic Warrant Listing Proposal differ from those discussed herein for Peso Warrants, the customer margin level specified above will be applied.

¹⁶ See *supra* note 12.

Warrants listed by the Amex, calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.¹⁷

Based on the foregoing, the Commission believes that the listing and trading of Peso Warrants, within the framework described above, is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 realigns the customer margin requirements to reflect more accurately the recent volatility of the Mexican peso in relation to the U.S. dollar. Moreover, the Commission notes that the original proposal and Amendment No. 1 to the proposal were published in the **Federal Register** for the full 21-day comment period and that no comments were received by the Commission regarding either the original proposal or the lower customer margin levels proposed in Amendment No. 1.

Amendment No. 3 provides that the Amex will review the volatility of the Mexican peso in relation to the U.S. dollar on at least a quarterly basis and increase the applicable customer margin levels if appropriate. Moreover, the Amex cannot lower the customer margin levels from the 18% and 15% levels provided above without Commission approval pursuant to Section 19(b) of the Act. As discussed above, the Commission believes these procedures will ensure that the customer margin requirements for Peso Warrants are maintained at levels adequate to cover present and future volatility of the Mexican Peso in relation to the U.S. dollar.

Based on the above and in order to allow the Amex to begin listing Peso Warrants without delay, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 50 Fifth Street, N.W., Washington, D.C. 20549. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-95-04 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-Amex-95-04), as amended by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35798; File Nos. SR-Amex-95-17; SR-BSE-95-09; SR-CHX-95-12; SR-NASD-95-24; SR-NYSE-95-19; SR-PSE-95-14; SR-PHLX-95-34]

**Self-Regulatory Organizations;
American Stock Exchange, Inc.;
Boston Stock Exchange, Incorporated;
Chicago Stock Exchange Incorporated;
National Association of Securities
Dealers, Inc.; New York Stock
Exchange, Inc.; the Pacific Stock
Exchange Incorporated; Philadelphia
Stock Exchange, Inc., Order Approving
on an Accelerated Basis Proposed
Rule Changes Regarding Depository
Eligibility Requirements**

June 1, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ the above-referenced self-regulatory organizations ("SROs") filed proposed rule changes² with the

¹⁸ 15 U.S.C. 78s(b)(2) (1988).

¹⁹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Proposed rule changes were filed with the Commission by each SRO in conjunction with substantially similar proposals by the other SROs as follows: American Stock Exchange, Inc. ("Amex") on May 16, 1995; Boston Stock Exchange, Incorporated ("BSE") on May 18, 1995; Chicago Stock Exchange Incorporated ("CHX") on April 26, 1995; National Association of Securities Dealers, Inc. ("NASD") on May 19, 1995; New York Stock Exchange, Inc. ("NYSE") on May 16, 1995; The Pacific Stock Exchange Incorporated ("PSE") on May 15, 1995; and Philadelphia Stock Exchange, Inc. ("PHLX") on May 19, 1995. On May 18, 1995, PHLX amended its proposed rule change to

Securities and Exchange Commission ("Commission") regarding depository eligibility requirements for issuers. Notices of the proposed rule changes were published in the **Federal Register** to solicit comments from interested persons.³ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes on an accelerated basis to be effective on June 7, 1995.

I. Description of the Proposal

Under the rule changes,⁴ each SRO will adopt a depository eligibility rule⁵ for issuers that desire to have their securities listed on a national securities exchange or be eligible for inclusion in the Nasdaq Stock Market ("Nasdaq").⁶ The rule changes will require issuers to represent to a national securities exchange or the NASD that the CUSIP number identifying the securities⁷ to be listed on such exchange or to be eligible for inclusion in Nasdaq has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.⁸ This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

conform to the rule changes filed by the other SROs. Letter from Sharon S. Metzger, PHLX, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (May 18, 1995).

³ Securities Exchange Act Release Nos. 35734 (May 18, 1995), 60 FR 27571 (Amex); 35735 (May 18, 1995), 60 FR 27572 (BSE); 35711 (May 12, 1995), 60 FR 27357 (CHX); 35774 (May 26, 1995), 60 FR 28813 (NASD); 35773 (May 26, 1995), 60 FR 28817 (NYSE); 35740 (May 19, 1995), 60 FR 27996 (PSE); 35772 (May 26, 1995), 60 FR 28815 (PHLX).

⁴ The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the NASD.

⁵ Rule 777 (Amex); Chapter III, Section 8(a) (BSE); Rule 7(I) (CHX); Part II, Section 1 (c)(23) of Schedule D to the NASD by-laws ("By-laws") and Section 11 of the Uniform Practice Code ("UPC") (NASD); Rule 227 (NYSE); Rule 5.9(d) (PSE); and Rule 853 (PHLX).

⁶ In addition to the adoption of the uniform depository eligibility rule for inclusion in the By-laws, the NASD has amended the definition of "depository eligibility" set forth in Section 11 of the UPC consistent with the uniform depository eligibility rule. The NASD had to amend the definition of "depository eligibility" because the NASD's depository settlement rule applies to all NASD members regardless of where the securities are listed. In comparison, each exchange's depository settlement rule only applies to transactions in the securities listed on that exchange.

⁷ This requirement does not apply to American Depository Receipts for securities of a foreign issuer (Amex, BSE, CHX, NYSE, PSE, and PHLX) or securities of a Canadian issuer (NASD).

⁸ 15 U.S.C. 78q-1 (1988).

¹⁷ See supra note 13.