

50 contracts during such high volume situations will help alleviate the backlogging of orders in the systems and allow for the quick, efficient execution of public customer orders. The Exchange represents that the existing system is sufficient to implement the increase in order size.

The Amex indicates that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) 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, and to improve 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 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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. 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 to inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. 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-98-

44 and should be submitted by March 25, 1999.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with 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 of the Act. Section 6(b)(5)<sup>6</sup> of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that increasing to 50 the number of option contracts executable through the Exchange's AUTO-EX order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option classes consistent with its obligations under the Act. The Commission also believes, based on representations by the Exchange, that the increase will not expose the Exchange's AUTO-EX system to risk of failure or operational break-down.

Pursuant to Section 19(b)(2),<sup>7</sup> the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.<sup>8</sup> The Commission believes accelerated approval is appropriate to permit the Exchange to immediately increase the size of orders executable through AUTO-EX to respond to the types of emergency situations discussed above.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed change, as amended, (SR-Amex-98-44) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41100; File No. SR-Amex-98-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to Options on the Cure for Cancer Common Stock Index

February 24, 1999.

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 give that on August 14, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on January 28, 1999,<sup>3</sup> and Amendment No. 2 on February 24, 1999.<sup>4</sup> The proposed rule change, as amended, is described in Items I, II, and III 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 trade options on the Cure for Cancer Common Stock Index ("Index"), a new index

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

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

<sup>3</sup> In Amendment No. 1, the Exchange amended its eligibility standard for component securities by adding an additional level of trading volume. Further, the Exchange amended its maintenance criteria by raising the percentage of the index that must satisfy Rule 915, clarifying that the Commission has agreed to a specific component of the index satisfying the standard set forth in Amex Rule 916 instead of Amex Rule 915, and specifying that 90% of the weight of the index must have a minimum monthly trading volume of 500,000 shares and 10% of the weight of the index must have a minimum trading volume of 350,000 shares for each of the last six months. See Amended Rule 19b-4 Filing ("Amendment No. 1").

<sup>4</sup> In Amendment No. 2, the Exchange specified its procedure for rebalancing the index in the event of certain types of corporate events, raised its eligibility standard for component securities by raising the level of trading volume required for initial eligibility, clarified that Cell Pathways, Inc. currently satisfies the initial options eligibility criteria of Amex Rule 915, and clarified that the Exchange will maintain the index consistent with its original purpose. Further, the Exchange specified that stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance whenever possible. See Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"). Commission, dated February 23, 1999 ("Amendment No. 2").

developed by Amex comprising of companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes.

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

In its filing with the Commission, Amex 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. Amex 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to permit the Exchange to trade standardized options on the Index. The Index is composed of the stocks of twelve companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes. Options on the Index will provide investors with a low-cost means to participate in the performance of the cancer research, treatment and cure industry and to hedge against the risk of investing in the industry.

#### Eligibility Standards for Index Components

Amex, as developer of the Index, is responsible for selecting and maintaining the companies to be included in the Index. The Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standard: (1) each component has a market capitalization of at least \$75 million, except one that has a market value of at least \$50 million and accounts for no more than 10% of the weight of the Index; (2) more than 80% of the weight of the Index is accounted for by securities each having a trading volume of not less than 1,000,000 shares over each of the six months and the remaining 20% of the weight of the Index is accounted for by one component having a trading volume of not less than 850,000 shares and the other, specifically agreed to by the Commission, trading not less than

350,000 shares over each of the six months;<sup>5</sup> (3) 75% of the Index's components and its numerical index value currently underlie standardized options; (4) foreign country securities or American Depositary Receipts ("ADR") thereon are not currently represented in the Index; (5) all component stocks are either listed on the New York Stock Exchange ("NYSE"), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported National Market System ("NMS") securities; and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

The Exchange believes the potential for manipulation of the Index is minimized for the following reasons: (1) no single component dominates the Index, which is equal-dollar weighted, with each component constituting approximately 8.3% of the Index; (2) 75% of the value of the Index is accounted for by stocks which currently underlie standardized options; and (3) the component stocks are substantial and liquid, having an average market capitalization of \$247.43 million, an average of 22.39 million shares outstanding, and a six-month average monthly trading volume of 4.9 million shares.

#### Index Maintenance

The Index will be maintained by the Exchange consistent with its original purpose (*i.e.*, to include components engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes).<sup>6</sup> The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions.<sup>7</sup> If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and

<sup>5</sup> See Amendment No. 1, *supra* note 3 and Amendment No. 2, *supra* note 4. The Amex represents that it will verify that the individual component securities satisfy this requirement as of February 26, 1999. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on February 23, 1999.

<sup>6</sup> See Amendment No. 2, *supra* note 4.

<sup>7</sup> *Id.*

acquisitions. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.<sup>8</sup>

The Exchange will maintain the Index so that (1) the Index is comprised of no less than nine component securities; (2) the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of \$75 million and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of \$50 million; (3) 75% of the Index's numerical index value will meet the then current criteria for standardized option trading set forth in Amex Rule 915, except that one component included in the 75% and specifically agreed to by the Commission may meet the then current criteria set forth in Amex Rule 916;<sup>9</sup> (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on Amex, NYSE, or Nasdaq/NMS; and (6) each of the component stocks shall have a minimum monthly trading volume of at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, trading volume must be at least 350,000 shares for each of the last six months.<sup>10</sup>

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

#### Index Calculation

The Index will be calculated by the Amex using an "equal-dollar weighted" methodology. The following is a description of the methodology. As of the market close on December 31, 1992, a portfolio of stocks was established representing an investment of approximately \$100,000 in the stock (rounded to the nearest whole share) of

<sup>8</sup> *Id.*

<sup>9</sup> See Amendment No. 1, *supra* note 3.

<sup>10</sup> *Id.*

each of the companies in the index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 100.00 as of the close of trading on December 31, 1992. Quarterly, following the close of trading on the third Friday of February, May, August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment is made during the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security of the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition to a replacement, the average dollar value of the remaining components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

#### *Expiration and Settlement*

The proposed options on the Index will be European style (*i.e.*, exercises permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. (ET)) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following

the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer-term option series having up to thirty-six months to expiration and FLEX Index options may be traded on the Index. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on one-tenth ( $\frac{1}{10}$ ) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options, either full or reduced value, would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have Europeans style exercise.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.<sup>11</sup>

#### *Exchange Rules Applicable to Stock Index Options*

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Exchange Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Amex Rule 900C(b)(1). With respect to Amex Rule 903C(b), the Exchange proposes a list near-the-money (*i.e.*, within ten points above or below the

current Index value) option series on the Index at  $2\frac{1}{2}$  point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>12</sup> in general and furthers the objectives of Section 6(b)(5)<sup>13</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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*

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **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

<sup>11</sup> The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. See Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR-OCC-95-19).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

Commission, 450 Fifth Street, NW, Washington, DC 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 Room in Washington, DC. 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-98-31 and should be submitted by March 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-5374 Filed 3-3-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41091; File No. SR-Amex-99-07]

### Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment to Amex Rule 901C Regarding the Listing and Trading of Generic Narrow-Based Index Options

February 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended<sup>1</sup> (the "ACT") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Rule 901C to provide for the trading of narrow-based stock index options pursuant to new Rule 19b-4(e)<sup>3</sup> under the Act.

#### 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 self-regulatory organization 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

###### (1) Purpose

The Exchange proposes to amend Amex Rule 901C to provide for the trading of narrow-based stock index options pursuant to new Rule 19b-4(e) under the Act. Amex Rule 901C currently provides that the Exchange may trade options on a new narrow-based index pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act provided the index meets the generic criteria set forth in Amex Rule 901C. As discussed in the Commission release adopting new Rule 19b-4(e), however, the Exchange would no longer be required to submit, pursuant to new Rule 19b-4(e) under the Act, a proposed rule change to trade options on a new narrow-based index provided the index meets the generic criteria set forth in Exchange Rule 901C.

In its release adopting new Rule 19b-4(e), the Commission noted that in order to rely on the amendment and not submit filings pursuant to Section 19(b)(3)(A) for options that satisfy the criteria of the Generic Narrow-Based Index Option Approval Order,<sup>5</sup> an SRO could submit a proposed rule change for Commission approval to eliminate the Section 19(b)(3)(A) rule filing requirement from its existing rules.<sup>6</sup>

<sup>3</sup> Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) ("New Products Release").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> Securities Exchange Act Release No. 34157 (June 3, 1994) 59 FR 30062 (June 10, 1994).

<sup>6</sup> See New Products Release at note 89.

Accordingly, to enable the Exchange to use new Rule 19b-4(e), the Exchange proposes to eliminate the Section 19(b)(3)(A) rule filing requirement from Rule 901C. The Exchange represents that use of new Rule 19b-4(e) will be in accordance with the terms and conditions set forth in the order approving the Rule.

The Exchange also proposes to amend Rule 901C to change the term "Chinese wall" to "fire wall." The Exchange believes that the use of the term fire wall is appropriate and more accurately describes the informational barriers commonly used in the securities industry.

Finally, the Exchange notes that the release adopting new Rule 19b-4(e) does not become effective until February 22, 1999. Accordingly, the Exchange will not provide for the trading of options on any narrow-based index pursuant to new Rule 19b-4(e) until after February 22, 1999, because, pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6)<sup>7</sup> of the Act, this proposal to amend Rule 901C will become operative until thirty days after the date of its filing with the Commission. Therefore, this proposal will not become operative until March 11, 1999.

The Exchange proposes that the following provisions of the Amex Rules be amended as set forth below.

[Bracketing] indicates text to be deleted and italicizing indicates text to be added.

#### Designation of Stock Index Options

Rule 901C. (a)-(c) No change.

#### Commentary

.01 No change.

.02 The Exchange has received approval, pursuant to [Section 19(b) of] the Securities Exchange Act of 1934 ("Act"), to list options on stock industry index groups pursuant to *Rule 19b-4(e)* [Section 19(b)(3)(A)] of the Act *provided* [The Securities and Exchange Commission stated in its Approval Order that a proposal to list options on stock industry index groups can be effective upon its filing with the Commission provided the Exchange (i) sends a draft of its filing to the Commission at least one week before formally filing the document pursuant to Rule 19b-4 of the Act; (ii) proposes to commence trading in options on the stock industry index group not earlier than 30 days after the date of the filing;

<sup>7</sup> 17 CFR 240.19b-4(f)(6). Former paragraph (e) under Rule 19b-4 was redesignated paragraph (f) when the New Products Release promulgating new paragraph (e) became effective on February 22, 1999.

<sup>14</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.