remedies any material irreconcilable conflict but in no event will the Fund, or Calamos (or any other investment adviser) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by Condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of the majority of contract owners materially and adversely affected by the material irreconcilable conflict. No Plan shall be required by this Condition 5 to establish a new funding medium for such Plan if: (a) An offer to do so has been declined by a vote of a majority of Plan participants materially and adversely affected by the irreconcilable material conflict, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a Plan participant vote.

7. Participants will be informed promptly in writing of the Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission continues to interpret the 1940 Act as requiring pass-though voting privileges for contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund or series thereof held in Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. In addition, each Participating Insurance Company will vote shares of the Fund, or series thereof, held in its separate accounts for which it has not received timely voting instructions as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculate voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote the Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts shall be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Fund will notify all Participating Insurance Companies and Plans that disclosure in separate account prospectuses or plan prospectuses or other plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Fund and the interest of Plans investing in the Fund may conflict, and (c) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 Rule 6e–3(T) are amended, or Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and proposed Ruled 6e–3, as adopted, to the extent applicable.

12. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the Act) as well as with Section 16(a) and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

13. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

**Conclusion**

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–6079 Filed 3–10–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITY AND EXCHANGE COMMISSION

**[Release No. 35–27149]**

## Filings Under the Public Utility Holding Company ''Act'' of 1935, as Amended (Act)

March 8, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applicant(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applicant(s) and/or declaration(s) should submit their views in writing by March 8, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or decalarant(s) at the address(es) specified below. Proof of service (by

affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Eastern Utilities Associates (70–9611)**

Eastern Utilities Associates (''EUA''), a registered holding company located at 750 West Center Street, P.O. Box 543, West Bridgewater, Massachusetts 02379, has filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

EUA requests Commission approval to guaranty certain performance obligations of EUA Cogenex Corporation (''Cogenex''), a wholly owned nonutility subsidiary of EUA, in connection with (1) Cogenex's sale of certain (''Asset Sale'') to Fleet Business Credit Corporation (''Fleet''), and (2) the proposed restructuring and additional funding by Fleet of certain Cogenex contracts previously sold to Fleet under a separate program agreement (''Restructuring'').

Under the Asset Sale and the Restructuring, Cogenex proposes to sell to Fleet, for 475 million, approximately $81 million dollars worth of assets, which will include energy service contracts, notes receivable, and energy efficient equipment. EUA estimates that the energy service contracts will generate, as of January 1, 2000, approximately $110 million of gross cash flow.

As a condition to entering into the Asset Sale and the Restructuring, Fleet has requested that EUA (or its agreed upon successor) (1) Maintain a 51% ownership interest in Cogenex, and (2) Guaranty Cogenex's obligations under the Asset Sale and the Restructuring, including the continued service and performance of the energy service contracts (''Performance Guaranty''). Under the Asset Sale and Restructuring, Fleet will assume all third party credit risk under the contracts. The total principal subject to the Performance Guaranty will be approximately $100 million ($75 million for the Asset Sale and Restructuring and $25 million previously funded by Fleet prior to the Restructuring).

For the Commission by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–6077 Filed 3–10–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42498; File No. SR–Amex–99–21]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Amending Section 106 of the Amex Company Guide

March 6, 2000.

### I. Introduction

On June 10, 1999, the American Stock Exchange LLC (''Exchange'' or ''Amex''), submitted to the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Section 106 of the *Amex Company Guide.* The Exchange filed Amendments No. 1 [3] and No. 2 [4] to the proposed rule change on June 14, 1999 and December 1, 1999, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 24, 2000.[5] The Commission received no comments on the proposal. This order approves the proposal, as amended.

### II. Description of the Proposal

The Exchange proposes to amend Section 106 of the *Amex Company guide* to provide for the trading of stock index industry group warrants [6] pursuant to new Rule 19b–4(e) [7] under the Act. Section 106 of the *Amex Company Guide* currently authorizes the Exchange to trade warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act provided that the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.[8] As discussed in the New Products Release, 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 warrants on a new stock index industry group provided the index meets the generic criteria set forth in Commentary .02 to Amex Rule 901C.

In the New Products Release, the Commission noted that in order to rely on the amendment and not submit filings pursuant to Section 19(b)(3)(A) for warrants that satisfy the criteria of rule 901C, a self-regulatory organization would be required to submit a proposed rule change for Commission approval to eliminate the Section 19(b)(3)(A) rule filing requirement from its existing rules. [9] 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 Section 106 of the *Amex Company Guide.*[10] Amex Rule 901c will remain unchanged. The Exchange represents that the use of new Rule 19b–4(e) will be in accordance with the terms and conditions set forth in the New Products Release.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 11, 1999 (''Amendment No. 1''). The Exchange originally filed the proposed rule change under Section 19(b)(3)((A) of the Act. Pursuant to Commission staff's request, the Exchange refiled the proposed rule change under Section 199b)(2) of the Act.

[4] Letter from Scott Van Hatten, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 1, 1999 (''Amendment No. 2''). Amendment No. 2 states that the Exchange will issue a circular prior to trading any new index warrant pursuant to Rule 19b–4(e) to (i) highlight specific risks associated with warrants on new indexes and remind members that index warrants are direct obligations of the issuer, which are not subject to a clearing house guarantee, (ii) clarify that index warrants may only be sold to accounts approved for standardized options trading, and (iii) clarify that the Exchange's options suitability standards apply to index warrants. Amendment No. 2 also states that Amex Rules 1100 through 1110, which govern issuer eligibility, margin requirements, discretionary accounts, supervision of accounts, position and exercise limits, reportable positions, and trading halts and suspensions, will apply to index warrants. Finally, Amendment No. 2 states that the Exchange's enhanced surveillance procedures will continue to apply to surveillance of index warrants traded pursuant to rule 19b–4(e).

[5] Securities Exchange Act Release No. 42342 (Jan. 14, 2000), 65 FR 3750.

[6] Amex Rule 900C defines ''Stock Index Industry Group'' as a stock index group relating to a stock index which reflects representative stock market values or prices of a particular industry or related industries (also referred to as a ''narrow based index'').

[7] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (''New Products Release'').

[8] The Commission granted approval to list and trade narrow-based index warrants pursuant to Section 19(b)(3)(A) in Securities Exchange Act Release No. 37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).

[9] *See supra* n. 7, at n. 89.

[10] The Commission approved a similar change to Amex Rule 901C to permit the trading of narrow-based index options pursuant to new Rule 19b–4(e). *See* Securities Exchange Act Release No. 41091 (Feb. 23, 1999), 64 FR 10515 (March 4, 1999).