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Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 23, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-10643 Filed 4-27-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44211; File No. SR-AMEX-2001-14]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to Members' Written Proposals to List Equity Option Classes

April 23, 2001.

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 March 8, 2001, 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 Exchange submitted an amendment to the proposed rule change on April 17,

2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Amex of any equity option class. The text of the proposed rule change is set forth below. All language is being added.

\* \* \* \* \*

#### Rule 915 Criteria for Underlying Securities

\* \* \* \* \*

#### Commentary

\* \* \* \* \*

.08 *Members or member organizations may submit written proposals requesting the Exchange to review listing and trading any equity option class. The written proposal should include a discussion of how the proposed option and its underlying security comply with the criteria set forth in paragraph (a) below and with the considerations set forth in paragraph (b). Written proposals received prior to 1:00 p.m. will be considered to be received on that business day and proposals received after 1:00 p.m. will be deemed to have been received on the next business day.*

(a) *Listing Criteria—To be eligible to be considered for listing on the Exchange, the underlying security must meet the criteria and guidelines set forth in Rule 915 and its Commentary for options on equity securities.*

(b) *Listing Considerations—In determining whether to list and trade an option class proposed pursuant to Commentary, the Exchange may consider any or all of the following factors:*

(i) *If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over near and long-term;*

(ii) *The level and nature of the share and/or trade volume for the underlying security and trends in such volume over near and long-term;*

<sup>3</sup> See letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated April 16, 2001 ("Amendment No. 1"). Amendment No. 1 revises proposed Commentary .08 to Amex Rule 915 to require the Amex to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.

(iii) *If the underlying security is listed (or is a prospective listed security) on the Amex, or an affiliated of the Amex, the views of the issuer of such security;*  
(iv) *The price, price volatility, and spread of the underlying security, its "short interest" (i.e., the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of members and investors to borrow the underlying security;*

(v) *The industry the underlying security represents in order to: (i) maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and*  
(vi) *The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates.*

The Exchange shall review and make a determination regarding a member's listing proposal within twenty-five days of receipt of the proposal. If the determination is not to list the proposed option class or to limit or condition the listing of the option in any way, then the Exchange shall, in writing within the twenty-five day period, inform the member submitting the proposal the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance. If the Exchange relies upon the impact the listing could have on bona fide strategies or businesses of the Exchange or its affiliates as a factor for denying, limiting or conditioning the proposed listing, the Exchange shall maintain a record of the bona fide business or strategic considerations supporting its decision.

These procedures will not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list and trade.

In addition, the Exchange's interpretation regarding threats, harassment and retaliation set forth in Rule 16, Commentary .01 shall apply to the listing proposals made by members pursuant to this Commentary .08.

\* \* \* \* \*

#### 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 Amex included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

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

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

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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Exchange of any equity option class.<sup>4</sup> Commentary .08 would require the underlying security to meet the criteria and guidelines set forth in Amex Rule 915 and its Commentary before it can be considered for listing on the Exchange. The written proposal would be required to include a discussion of how the proposed listing complies with the criteria set forth in Amex Rule 915 and its Commentary and the factors set forth below. If a proposal is submitted after 1:00 p.m. on a business day, it would be considered submitted on the following business day. If the underlying security meets the eligibility criteria and guidelines, the Exchange would consider the following factors in determining to list the proposed option:

- If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over the near and long-term;
- The level and nature of the share and/or trade volume for the underlying security and trends in such volume over the near and long-term;
- If the underlying security is listed (or is a prospective listed security) on the Exchange, or on an affiliate of the Exchange, the views of the issuer of such security;
- The price, price volatility, and spread of the underlying security, its "short interest" (*i.e.*, the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of

<sup>4</sup> As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Amex, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

members and investors to borrow the underlying security.

- The industry the underlying security represents in order to: (i) Maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and
- The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates. The Amex would be required to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.<sup>5</sup>

The Exchange would be required to review and make a determination regarding a member's listing proposal within 25 days of receipt of the proposal. If the Exchange decides not to list the proposed option class or to limit or condition the listing of the option in any way, the Exchange would be required, in writing and within the 25 day period, to inform the member of the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance.

The proposed rule change would not limit the Exchange's right on its own determination to research, identify, and propose to the Stock Selection Committee, as it does today, the listing of options on securities that meet the listing criteria set forth in Amex Rule 915 and its Commentary. The proposed procedures would not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list. In addition, proposed Commentary .08 would reference the anti-harassment rule set forth in Amex Rule 16, Commentary .01, to prohibit threats, harassment, and retaliation against any person or entity making or advocating a listing proposal or beginning to make markets in any option class on any exchange or other market.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of section 6(b)(5)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market

<sup>5</sup> *See* Amendment No. 1, *supra* note 3.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

and a national market system, and protect investors and the public interest.

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

The Amex does not believe that the proposed rule change, as amended, 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 Amex did not solicit or receive written comments on 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, as amended, 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 in the Commission's Public Reference Room. Copies of such filings 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-2001-14 and should be submitted by May 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-10609 Filed 4-27-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44208; File No. SR-ISE-01-02]

### Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Anticipatory Hedging Activity

April 20, 2001.

On January 12, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to anticipatory hedging activity.

The proposed rule change would prohibit a member or a person associated with a member who has knowledge of all the terms and conditions concerning the imminent execution of (1) an order and a solicited order, (2) an order being facilitated, or (3) two orders being crossed, to enter, based on that knowledge, an order to buy or sell an option of the same class, shares in the underlying security, or any related instrument, before the same information is disclosed to the trading crowd.

The proposed rule change was published for comment in the **Federal Register** on February 27, 2001.<sup>3</sup> The Commission received no comments on the proposal.

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<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds

specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>6</sup> because it is designed to maintain the integrity of the ISE's market by preventing the misuse of non-public information and affording the trading crowd a fair and full opportunity to make informed trading decisions. It also conforms to similar rules at other options exchanges relating to anticipatory hedging.<sup>7</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-ISE-01-02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-10608 Filed 4-27-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44214; File No. SR-NASD-2001-21]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

April 24, 2001.

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 March 23, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On April 20, 2001, the NASD filed Amendment No. 1 to the proposal.<sup>3</sup> The

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

<sup>7</sup> See, e.g., American Stock Exchange Rule 950(d), Commentary .04., Chicago Board Options Exchange Rule 6.9(e).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> See letter from Laura Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 19, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD changed the first sentence of NASD Rule 10306 to indicate that the terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution, rather than the NASD as originally proposed.

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the Code of Arbitration of Procedure ("Code") to clarify or simplify several fee-related provisions of the Code. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 10306. Settlements

[All settlements upon any matter shall be at the election of the parties.]

(a) *Parties to an arbitration may agree to settle their dispute at any time.*

(b) *The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.*

\* \* \* \* \*

#### 10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) [Unless waived by the Director of Arbitration upon a showing of financial need,] *If an adjournment requested by a party is granted after arbitrators have been appointed, the [a] party requesting the adjournment [after arbitrators have been appointed shall deposit with the request for an adjournment,] shall pay a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed [\$1,000] 1,500 for a second or subsequent adjournment requested by that party. [If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.] The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.*

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

\* \* \* \* \*

<sup>8</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> See Securities Exchange Act Release No. 43983 (February 20, 2001), 66 FR 12576 (February 27, 2001).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.