

have a significant impact on the total hydrogen concentration within the containment when compared to the values associated with the non-TPBAR core. The maximum containment hydrogen concentration can be maintained at less than the lower flammability limit of 4.0-volume-percent, with one recombiner train started at a 3-percent hydrogen concentration approximately 24 hours after an LBLOCA.

#### Summary

The Commission has completed its evaluation of the proposed action. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

#### Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. However, because there are no significant environmental impacts associated with this action, and because Pub. L. 106-65 directs that DOE produce tritium at WBN or the Sequoyah Nuclear Plant, this is not considered a viable option.

#### Alternative Use of Resources

DOE evaluated the action, including completing construction of one or both of the Bellefonte Nuclear Plant Units and construction of an accelerator facility at the Savannah River site and concluded that the proposed alternative has the least environmental impact of the options considered. The NRC has no reason to disagree with DOE's decision.

#### Agencies and Persons Consulted

On August 15, 2002, the staff consulted with the Tennessee State official, Debra Schults of the Tennessee Bureau of Radiological Health, regarding the environmental impact of the

proposed action. The State official had no comments.

#### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20, 2001, as supplemented by letters dated October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 20th day of August, 2002.

For the Nuclear Regulatory Commission,

#### L. Mark Padovan,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46375; File No. SR-Amex-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Revising the Maintenance Listing Criteria for Underlying Securities in Amex Rule 916

August 16, 2002.

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 August 12, 2002, 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 and II below, which Items have been prepared by the Exchange. Amex submitted Amendment No. 1 to the proposed rule change on August 16, 2002.<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 Exchange proposes to amend Amex Rule 916 to permit the addition of a new series of individual equity option contracts that otherwise meet the maintenance listing standards except for the requirement that the market price per share of the underlying security be at least \$3.00. The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

\* \* \* \* \*

#### Rule 916. Withdrawal of Approval of Underlying Securities

No Change.

#### Commentary

.01 No Change.

1. No Change.

2. No Change.

3. No Change.

4. *Subject to Commentary .02 below,*

[T]he market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.

5. No Change.

6. No Change.

7. No Change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange

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

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

<sup>3</sup> This notice, representing Amendment No. 1, replaces the original filing in its entirety. In Amendment No. 1, the Exchange revised the proposed rule text to add the following language: "and at the time the additional series was listed by such other registered national securities exchange it met the \$3 market price requirement"; and requested expedited review and accelerated effectiveness of the proposed rule change, as amended, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). See letter from Jeffrey Burns, Assistant General Counsel, Amex, to Florence E. Harmon, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2002 ("Amendment No. 1").

shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than \$3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the \$3 market price requirement*. Subject to Paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above \$3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security traded on the last trading day before the series are added.

.03 No Change.

.04 No Change.

.05 No Change.

.06 No Change.

.07 No Change.

.08 No Change.

.09 No Change.

\* \* \* \* \*

## 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 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 III 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

Commentary .01 to Amex Rule 916 sets forth the guidelines to be used in determining whether an underlying individual equity security previously approved for options trading meets the

requirements for continuance of such approval. The Amex states that these maintenance listing standards are uniform among the options exchanges. Specifically, Guideline 4 of Commentary .01 to Rule 916 ("Guideline 4") states that the Exchange may not list additional series for an option class if the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security is traded.<sup>4</sup> If the underlying security does not meet the guideline price then the Exchange will not open for trading additional series of that class and may take other actions such as prohibiting opening purchase transactions in existing series. Subject to Guideline 4, Commentary .02 to Rule 916 provides that the Exchange may open for trading additional series of options contracts of the class covering an underlying security at any time when the market price per share of such underlying security is at or above \$3 at the time such additional series are authorized for trading.<sup>5</sup>

In recent months, the Exchange notes that the addition of additional series of existing options classes have not been uniform due to the operation of the maintenance listing standards. For example, for intra-day series additions, the underlying security may trade at or above \$3 for a brief period and then drop below \$3 for the foreseeable future. If an exchange and its staff fail to quickly note that a particular underlying security is trading at or above \$3, the Exchange may be prohibited from adding the additional series if at the time of authorization the underlying security is trading below \$3.<sup>6</sup> Accordingly, the ability to trade an additional series of an approved options class may solely depend on the

<sup>4</sup> See Securities Exchange Act Release No. 45074 (November 16, 2001), 66 FR 59278 (November 27, 2001). The Amex amended Commentaries .01 and .02 to Rule 916 to reduce from \$5 to \$3 the price above which the underlying security must be traded before the Exchange may add additional series of options.

<sup>5</sup> Commentary .02 to Rule 916 provides that the market price for such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security is traded at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

<sup>6</sup> During the past three (3) months, the Amex has been unable to add additional series of approved options classes on the following underlying securities: (1) The Williams Companies, Inc.; (2) Elan Corporation Plc; (3) Atmel Corporation; (4) JDS Uniphase Corporation; and (5) Lucent Technologies Inc.

exchange that is quicker posting (*i.e.* point and click) or bringing up the series. The Exchange states that this is not the intention of the maintenance listing standard and is contrary to the purpose of the Act in promoting the development of a national market system for options. In addition, the mechanics of adding an additional series of approved options classes, especially intra-day, is effectively anti-competitive.

The Exchange proposes to amend Guideline 4 to Commentary .01 and Commentary .02 to Rule 916 to permit the addition of any additional series of options contract of the class covering such underlying security regardless of the market price of the underlying security *if* such options series is traded on at least one other registered national securities exchange.<sup>7</sup> This amendment to Commentary .02 to Rule 916 will provide that, for underlying securities that satisfy all of the maintenance listing requirements other than the \$3.00 per share price requirement, the Exchange would be permitted to list additional options series on securities regardless of the market price so long as such series are traded on at least one other registered national securities exchange. The Amex does not believe that the \$3 guideline is necessary to accomplish the intended purpose of the maintenance requirement when the options series is trading at another options exchange. In particular, the Amex believes that the listing of a series already trading at another options exchange is not susceptible to manipulation and will not lead to a proliferation of options classes on underlying securities that lack liquidity needed to maintain fair and orderly markets.

The Exchange believes that the maintenance listing standards other than price assure that options will be listed and traded on the securities of companies that are financially sound. Accordingly, the Exchange will continue to apply the other maintenance listing guidelines which assure that: (1) The underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there are a large number of holders

<sup>7</sup> The Exchange states that this proposal is consistent with a similar change to the Exchange's original listing criteria permitting the listing of an options class without reference to the market price of the underlying security if such options are traded on at least one other national securities exchange and the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been 5,000 contracts. See Commentary .01 to Rule 915 and Securities Exchange Act Release No. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002).

of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

The Amex believes that the demands of options customers and the marketplace should determine the securities on which options continue to be traded. The Exchange represents that the use of the revised guidelines will continue to ensure that options will be traded on securities of companies that are financially sound and are still subject to adequate minimum standards.

The Amex believes that although the maintenance listing requirements are generally uniform among the options exchanges, the application of such standards in the current market environment have had an anticompetitive effect. Specifically, the Exchange states that on several occasions during the past year, it was unable to list additional options series because the price of the underlying security had fallen below the requirement of \$3 after a series was added on another exchange.<sup>8</sup> Because the underlying security will otherwise continue to meet the maintenance listing standards, the other options exchange(s) may continue to trade the additional series while the Amex (as well as other options exchanges) may not add such options series.

Amex believes that its proposal is narrowly drafted to address the circumstances where a series of an approved options class is currently ineligible for addition on the Amex while at the same time, such series is trading on another options exchange. The Amex notes that when an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for both options and the underlying security. Accordingly, the Amex notes that the current proposal will not introduce any additional options series.

Because the addition of an options series under the proposed alternative maintenance listing standard requires trading of such series on another options exchange, the Amex believes that there would be no investor protection concerns with listing such additional options series on the Amex. In addition, the Exchange believes that listing these options series on the Amex

would enhance competition and benefit investors.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

No written comments were solicited or received with respect to 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 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 filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-68 and should be submitted by September 16, 2002.

## IV. Commissions' Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, 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(b)(5) of the Act.<sup>11</sup> The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though Amex will be permitted to list a series of option contracts when the market price of the underlying security is below \$3, because all of the other maintenance listing requirements of the Exchange must still be complied with, and the market price of the underlying security was at or above \$3 when it was listed on the first options exchange.<sup>12</sup> Therefore, the Commission finds that proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>13</sup>

The Amex has requested that the proposed rule change, as amended, be given accelerated approval pursuant to Section 19(b)(2) of the Act.<sup>14</sup> The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>15</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2002-68), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> The Commission notes that such series must have been properly listed by the original options exchange.

<sup>13</sup> 15 U.S.C. 78f(b)(5). 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>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 240.30-3(a)(12).

<sup>8</sup> See *supra* note 6.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).