

allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

37. The proposed substitution is not the type of substitution that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which section 26(c) was designed to prevent.

38. The proposed substitution also is unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

39. Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*Conclusion:*

Applicants assert that, for the reasons stated above, the requested order approving the Substitution should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8439 Filed 4-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47613; File No. SR-Amex-2003-19]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II 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 amend its initial listing guidelines in Commentary .01 and .05(d)(ii) to Amex rule 915 to allow options to be listed on "covered securities," when, among other things, the trading price of the underlying security was at least \$3 for the five business days prior to certification with The Options Clearing Corporation ("OCC"). The text of the proposed rule change follows. Additions are in italics. Deleted text is in [brackets].

\* \* \* \* \*

#### Rule 915. Criteria for Underlying Securities

- (a) No Change  
(b) No Change

#### Commentaries

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No Change  
2. No Change

3. No Change

4. (a) *If the underlying security is a "Covered Security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

(b) *If the underlying security is not a "Covered Security," [E]ither (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii) (a) the underlying security meets the guidelines for continued listing in rule 916; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.*

5. No Change

.02-.04 No Change

.05 (a)-(c) No Change

(d) In the case of a restructuring transaction that satisfies either or both of the conditions of subparagraph (a) above in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution;

(i) No Change

(ii) the Exchange may certify that the market price of the Restructured Security satisfies guideline 4 of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the Restructured Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructured Security was at least \$7.50, *or if the Restructured Security is a "Covered Security," as defined in Commentary .01(4) to rule 915, the market price of the Restructured Security was at least \$3.00; and*

(iii) No Change

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

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

.06-.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 Exchange 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 Exchange 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 amend its pricing requirement for underlying securities. Currently, Commentary .01(4) to Amex rule 915 provides that either (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection or (ii) the underlying security meets the guidelines for continued listing in Amex rule 916, options on such underlying security are traded on at least one other registered 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 at least 5,000 contracts.

The Exchange now proposes to amend Commentary .01(4) to Amex rule 915 to provide that, for underlying securities that are "Covered Securities," as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),<sup>3</sup> the closing market price of the underlying security must be at least \$3 per share for the five previous consecutive business days prior to the date on which the Amex submits an

option class certification to OCC.<sup>4</sup> Underlying securities that are not "Covered Securities" will continue to be subject to the Exchange's current \$ 7.50 price per share requirement found in Commentary .01 to Amex rule 915.<sup>5</sup>

The proposed rule change is identical to a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to revise its initial listing standards that was recently approved by the Commission and became effective on January 15, 2003.<sup>6</sup> In addition, the International Securities Exchange, Inc. ("ISE") has also proposed to match the CBOE amendment to options initial listing standards.<sup>7</sup> The Exchange seeks to amend its initial options listing guidelines in order to be consistent with both the CBOE and ISE so that the Amex is not placed at a competitive disadvantage with respect to the option classes that it may list. The Exchange further does not believe that this particular options initial listing guideline serves to accomplish its intended purpose of preventing the proliferation of option classes on overlying securities that lack adequate liquidity to maintain fair and orderly markets.

The Exchange believes that changing the initial price guideline to the proposed \$3 market price per share for "covered securities" would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection based on the economic realities of its customers and the marketplace. In determining to list new option classes, the Exchange also must ensure that its own systems and those of the Options Price Reporting Authority ("OPRA") have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed \$3 market price per share standard is also consistent with the guideline price in Exchange rule 916 for determining whether an underlying security previously approved for Exchange options transactions can continue to underlie options trading.<sup>8</sup> Commentary .01(4) and .02 to Amex

rule 916 sets a \$3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under rule 915. Accordingly, the Exchange believes that the proposed \$3 market price per share for "covered securities" should also be the threshold standard for the initial listing as well.

Consistent with both the CBOE and ISE proposals, the Exchange, as a safeguard against price manipulation, has proposed that the underlying security have a closing market price of at least \$3 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to OCC for listing and trading. The Exchange believes that the proposed "look back" period of five consecutive trading days provides a sufficient measure of protection from attempts to manipulate the market price of the underlying security. The proposed \$3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's quarterly delisting program,<sup>9</sup> would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within Amex rules, the Exchange proposes to also amend Commentary .04(d)(ii) to Amex rule 915 in connection with Restructured Securities. Commentary .04(d)(ii) to Amex rule 915 currently provides a method to certify that the market price of a Restructured Security satisfies the pricing requirement of Commentary .01(4) to Amex rule 915 referencing the \$7.50 market price per share requirement. In order to make Commentary .04(d)(ii) Amex rule 915 consistent with the pricing guideline change to Commentary .01(4) of Amex rule 915, the amended rule reflects the reduction of the market price from \$7.50 to \$3 as long as the Restructured Security is a "Covered Security."

<sup>3</sup> Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) \* \* \* ." See 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Commentary .01(4) to Amex rule 915 would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. See 15 U.S.C. 77r(b)(1)(B).

<sup>4</sup> For purposes of this proposal, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. See amended Commentary .01(4) to Amex rule 915.

<sup>5</sup> The Exchange is not seeking to amend any of the other initial listing guidelines set forth in Commentary .01 to Amex rule 915.

<sup>6</sup> See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

<sup>7</sup> See Securities Exchange Act Release No. 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003).

<sup>8</sup> See Commentary .01(4) and .02 of Amex rule 916.

<sup>9</sup> The Exchange states that it currently reviews multiply listed option classes, on a quarterly basis, for the purpose of delisting such option classes due to a lack of trading interest. Going forward, the Exchange intends to implement an active delisting program which would require the quarterly delisting of multiply listed option classes that do not trade more than twenty (20) contracts per day on the Exchange.

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b)<sup>10</sup> of the Act in general and furthers the objectives of section 6(b)(5)<sup>11</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove 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 believes that 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of rule 19b-4<sup>13</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under rule 19b-4(f)(6)(iii) of the Act,<sup>14</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent

with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.<sup>15</sup> As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,<sup>16</sup> and, therefore, the proposal is effective and operative upon filing with the Commission.

## 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All

<sup>15</sup> See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR-CBOE-2002-62). See also Securities Exchange Act Release Nos. 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (Notice of Filing and Immediate Effectiveness of SR-PCX-2003-06); and 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR-ISE-2003-04).

<sup>16</sup> For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

submissions should refer to File No. SR-Amex-2003-19 and should be submitted by April 29, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8446 Filed 4-7-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47609; File No. SR-MSRB-2002-12]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G-37, on Political Contributions and Prohibitions on Municipal Securities Business, G-8, on Books and Records, Revisions to Form G-37/G-38 and the Withdrawal of Certain Rule G-37 Questions and Answers**

April 1, 2003.

On September 26, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-12), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and rule 19b-4 thereunder.<sup>1</sup> The proposed rule change is described in items I, II, and III below, which Items have been prepared by the Board. On March 26, 2003, the MSRB filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

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

The Board is filing herewith amendments to rules G-37, on political contributions and prohibitions on municipal securities business, G-8, on books and records, revisions to Form G-37/G-38 and the withdrawal of certain Rule G-37 Questions and Answers. The cumulative amendments made to rules G-37 and G-8, the revisions to Form G-37/G-38 and the withdrawal of certain Rule G-37 Questions and Answers as set forth in the original filing and by Amendment No. 1 are collectively referred to herein as the "Proposed Rule

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

<sup>1</sup> 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78f.

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).