accordance with rule 53(c), affirmatively demonstrate that the issue and sale of a security to finance the acquisition of an EWG or the guarantee of a security of an EWG will not have a substantial adverse impact upon the financial integrity of the registered holding company system and will not have an adverse impact on any utility subsidiary, its customers or on the ability of State commissions to protect the subsidiary or customers.

III. Rules 53(b)(1) and 53(c)

A. Rule 53(b)(1)

Rule 53(b)(1) states that the safe harbor provided by the rule generally is not available if: (1) The registered holding company or any subsidiary company having assets with book value exceeding 10% or more of consolidated retained earnings has been the subject of a bankruptcy proceeding; (2) the average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in EWGs and FUCOs exceeds two percent of total capital invested in utility operations; or (3) in the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in EWGs and FUCOs, and the losses exceed an amount equal to 5% of consolidated retained earnings.

On September 23, 2005, Entergy New Orleans, Inc. (''ENO''), a public utility subsidiary of Entergy, filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code (''Bankruptcy Code'') in the United States Bankruptcy Court for the Eastern District of Louisiana. The book value of ENO's assets exceeded 10% of Entergy's ''consolidated retained earnings'' as of June 30, 2005. Consequently, the circumstances described in rule 53(b)(1) have occurred.

The bankruptcy petition was precipitated by the unanticipated and devastating impact of Hurricane Katrina, which destroyed substantial portions of ENO's facilities, disrupted its revenues, and, with the evacuation of the City of New Orleans (''City''), eliminated at least in the short term, the quality of ENO's customer base, which is directly linked to the fortunes of the City. ENO is continuing in possession of its properties and has continued to operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.[3]

ENO's most pressing concern, and the immediate cause of its bankruptcy filing, is the liquidity crisis resulting from the hurricane's severe disruption to operations. ENO estimates that over one hundred thousand of its customers are presently unable to accept electric and gas service, and will remain unable to accept such service for a period of time that cannot yet be determined. Other customers in the New Orleans area who have had their utility services restored have been displaced by Hurricane Katrina. The ordinary cycle of customer payment of utility bills has been shattered. As a result, ENO's cash receipts have been significantly below normal levels since the hurricane.

B. Rule 53(c)

In accordance with rule 53(c), Entergy believes that the transactions authorized in the Original Order, 2000 Order and 2004 Order (to the extent they involve the issuance of securities by Entergy to finance the acquisition of EWGs), (i) will not have a substantial adverse impact upon Entergy's financial integrity and (ii) will not have an adverse impact on Entergy's utility subsidiaries (including ENO), their customers or on the ability of Entergy's state and local regulators to protect the subsidiaries or customers. In support of its position, Entergy states that:

1. As of June 30, 2005, Entergy's aggregate investment in Exempt Projects was equal to 17% of Entergy's total consolidated capitalization, 15% of consolidated net utility plant and 18% of the market value of Entergy's common stock. As of March 31, 2000 (the most recent calendar quarter preceding the 2000 Order), Entergy's aggregate investment in Exempt Projects was equal to 7% of Entergy's total capitalization, 7% of Entergy's consolidated net utility plant and 24% of the market value of Entergy's outstanding common stock.

2. Entergy's consolidated retained earnings have grown by an average of 12% annually during the period since the Commission issued the 2000 Order (*i.e.*, from June 30, 2000 through June 30, 2005).

3. Income from Entergy's investments in Exempt Projects has contributed positively to its overall earnings during the period since the Commission issued the 2000 Order.

4. As of March 31, 2000 (the most recent calendar quarter preceding the 2000 Order), Entergy's consolidated capitalization ratio was approximately 50.0% debt and approximately 50.0% equity, consisting of approximately 5.0% preferred stock and approximately 45.0% common stock. As of June 30, 2005, Entergy's consolidated capitalization ratio was approximately 50.6% debt and approximately 49.4% equity, consisting of approximately 2.3% preferred stock and approximately 47.1% common stock. These ratios are within industry ranges set by the independent debt rating agencies for BBB-rated electric utility companies.

5. As of the date of the Amended Declarations, each of the considerations set forth in the 2000 Order, in support of Entergy's assertion that its existing and proposed level of investment in Exempt Projects would not have an adverse impact on any Entergy operating utility subsidiaries or their ratepayers, or on the ability of interested state commissions to protect the utilities and their customers, continues to apply.

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

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[3] On September 26, 2005, the Commission issued an emergency order (Holding Company Act Release No. 28036) authorizing Entergy and ENO to enter into a secured $200 million credit facility and allowing ENO to borrow up to $150 million under the credit facility. In addition the order modified two outstanding orders so as to eliminate the requirements that ENO maintain common equity of at least 30% of its consolidated capitalization and investment grade credit ratings.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52563; File No. SR–Amex–2004–74]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Commentary .01(5) to Amex Rule 916

October 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2004, 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 Amex. On September 26, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex proposed to amend the rule text of Amex Rule 915, in order to substitute the term ''NMS stock'' for the term ''national market system security,'' for consistency

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 eliminate Commentary .01(5) to Exchange Rule 916, which governs the withdrawal of approval for securities underlying options traded on the Exchange and amend Exchange Rule 915(a), which governs the criteria of underlying securities with respect to which option contracts are approved for listing and trading on the Exchange. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Office of the Secretary of Amex, and at the Commission's Public Reference Room.

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 eliminate Commentary .01(5) to Amex Rule 916. Commentary .01 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for options trading continues to be appropriate. Specifically, Rule 916 and related Commentary .01 provide that if an underlying security previously approved by the Exchange does not meet the then current requirements for continuance, the Exchange will not open for trading additional series of such options class and may also limit any new opening transactions in those options series that have previously been opened for trading.

Commentary .01(5), in particular, provides that an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever:

5. The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

The Exchange proposes to eliminate this provision based on its experience in recent years applying this requirement. The Exchange believes that this provision limits the ability of investors to use options to hedge existing equity positions and is not necessary given the entire application of Commentary .01. In addition, the Exchange notes that the underlying security will continue to trade on national securities exchanges, regardless of the late filings or reports required by the Exchange Act.

The Exchange submits that Commentary .01(5) potentially harms investors and the marketplace by preventing the use of new options series to hedge positions in the underlying security of companies that fail to make timely reports required by the Exchange Act. The Exchange states that this restriction is inconsistent with the underlying equity markets, whereby failure to properly file Exchange Act reports does not result in a similar trading restriction. Accordingly, the Exchange maintains that Commentary .01(5) limits the ability of investors who may wish to hedge their underlying stock positions with new options series, at a time when the ability to hedge may be particularly important.

The Exchange believes that Commentary .01(5) has substantially outlived any usefulness and now serves to unnecessarily burden and confuse the investing public. Commentary .01(5) to Rule 916 has been a part of the Exchange's continued listing criteria since late 1976, shortly after the listing and trading of standardized options commenced on the Exchange. In contrast to 1976, the Exchange states that the standardized options market today is a mature market largely consisting of sophisticated investors with significant access to information, such as information on the failure of a company to make timely Exchange Act reports. Therefore, the Exchange contends that there is no reason to limit the opportunity for investors to execute transactions in options classes (including new series within those classes) simply because a company is not timely in filing its Exchange Act reports, when investors are not similarly restricted from purchasing or selling shares in the underlying company.

Moreover, the limitation on new options series imposed pursuant to Commentary .01(5) causes considerable confusion and frustration in the options marketplace because it only restricts the trading of *new* series in a given option class. The Exchange has found that Commentary .01(5) tends to confuse both public customers and market professionals, who find themselves restricted from trading any new options series in a given class at the same time that trading occurs in pre-existing options series or the underlying stock itself. Still further confusion can arise in this process because the Exchange maintains that Amex, as well as the other options exchanges, have no independent means to verify whether any of the listed securities underlying options traded at the Exchange have failed to meet their Exchange Act reporting requirements. Accordingly, the options exchanges, including Amex, must rely on other SROs or third parties for such notification, which is always difficult to monitor, particularly since such third-party reports are sometimes delayed or inaccurate.[4]

The Exchange further submits that Commentary .01(5) is unnecessary for the protection of investors and the marketplace. For example, underlying securities that are delisted or fail to be NMS securities are no longer approved for options trading under existing rules. Specifically, existing Commentary .01(6) to Rule 916 provides that an underlying security will no longer be approved for options transactions when:

''(6) The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor traded through the facilities

with Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[4] The Exchange notes that it has a procedure in place to monitor when an underlying security previously approved for option transaction ceases to trade on or is delisted from its primary listed market. The Exchange's Listing Qualification Department (''Department'') monitors: (1) The daily list services issued by the primary listing markets (such as the New York Stock Exchange, Inc., Amex, and The Nasdaq Stock Market); (2) press releases issued by the primary listing markets and the news wires; and (3) information circulars issued by the primary listing markets. If the Department is aware that an underlying security may be halted for trading on or delisted from its primary listed market, the Department would monitor such security closely on a daily basis. In the event of a delisting of the underlying security from its primary listed market, Amex will cease opening new series of options in such security and allow the existing series of options to expire. Additionally, if the underlying security has been halted or suspended in the primary market, the Exchange may halt trading in the option class pursuant to Amex Rule 918(b) and shall halt trading pursuant to Amex Rule 117. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Steve L. Kuan, Special Counsel, Division of Market Regulation, Commission, September 29, 2005.

of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities or a national securities association, is no longer designated as an NMS security.''[5]

Amex believes a better approach is to limit or suspend options trading when the underlying security itself has been delisted and not subject the process to the inherent uncertainty of a failure of the underlying company to timely file its Exchange Act reports. The Exchange accordingly submits that Commentary .01(5) should be eliminated.

Moreover, the Exchange is amending Amex Rule 915(a) to substitute ''NMS stock'' as defined in Regulation NMS for the previous description of a national market system security. In addition, the Exchange is updating Commentary .01(6) of Rule 916 in light of Regulation NMS.

Both of these provisions include a requirement that the underlying security must be a national market system security (''NMS security''). As part of the recently adopted Regulation NMS, among other things, the Commission revised the definition of an ''NMS security.''[6] Specifically, Rule 600(b)(46) under Regulation NMS defines an NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' Rule 600(b)(47) also defines an ''NMS stock'' as any NMS security other than an option. As such, Exchange Rule 915(a) and Commentary .01(6) of Exchange Rule 916 will be amended to reflect these new terms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] 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 does not believe that the proposed rule change 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. 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 self-regulatory organization 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. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–74 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2004–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–74 and should be submitted on or before November 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

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[5] In Amendment No. 1, the Exchange proposed to amend Amex Rule 916, Commentary .01(6) to update the rule text with respect to the definition of ''NMS stock'' in Regulation NMS under the Act. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Steve L. Kuan, Special Counsel, Division of Market Regulation Commission, September 29, 2005.

[6] *See supra* note 3.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52562; File No. SR–CBOE–2004–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Deletion of Interpretation and Policy .01(e) to CBOE Rule 5.4

October 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. On September 21, 2005, the Exchange filed Amendment No. 1 to the proposed rule

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

[2] 17 CFR 240.19b–4.