

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 230

[Release No. 33–8404; File No. S7–17–04]

RIN 3235–AJ03

### Covered Securities Pursuant to Section 18 of the Securities Act of 1933

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) proposes for comment an amendment to a Rule under Section 18 of the Securities Act of 1933 (“Securities Act”), as amended, to designate securities listed on the International Securities Exchange, Inc. (“ISE”) as covered securities. Covered securities under Section 18 of the Securities Act are exempt from state law registration requirements.

**DATES:** Comments should be submitted on or before April 26, 2004.

**ADDRESSES:** Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File No. S7–17–04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Kelly Riley, Assistant Director, (202) 942–0752, Gordon Fuller, Counsel to the Assistant Director, (202) 942–0792 or Brian Trackman, Attorney, (202) 942–7951, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

### SUPPLEMENTARY INFORMATION:

### I. Introduction

In 1996, Congress amended Section 18 of the Securities Act to exempt from state registration requirements securities listed, or authorized for listing, on the New York Stock Exchange (“NYSE”), the American Stock Exchange (“Amex”), or the National Market System of the Nasdaq Stock Market (“Nasdaq/NMS”) (collectively, the “Named Markets”), or any national securities exchange designated by the Commission to have substantially similar listing standards to those markets.<sup>1</sup> More specifically, Section 18(a) of the Securities Act provides that “no law, rule, regulation, or order, or other administrative action of any State \* \* \* requiring, or with respect to, registration or qualification of securities \* \* \* shall directly or indirectly apply to a security that “(A) is a covered security.”<sup>2</sup> Covered securities are defined in Section 18(b)(1) to include those securities listed, or authorized for listing, on the Named Markets, or securities listed, or authorized for listing on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule are “substantially similar” to the Named Markets.<sup>3</sup>

Pursuant to Section 18(b)(1)(B) of the Securities Act, the Commission adopted Rule 146.<sup>4</sup> Rule 146(b) lists those national securities exchanges, or segments or tiers thereof, that the Commission has determined to have listing standards substantially similar to those of the Named Markets and thus securities listed on such exchanges are covered securities.<sup>5</sup> The ISE has petitioned the Commission to amend Rule 146(b) to determine that its listing standards for securities listed on the ISE are substantially similar to those of the Named Markets and, accordingly, that securities listed pursuant to such listing standards are covered securities for purposes of Section 18(b) of the Securities Act.<sup>6</sup> If the Commission

makes this determination, then securities listed on the ISE would be exempt from state law registration requirements.<sup>7</sup>

### II. Background

In 1998, the Chicago Board Options Exchange, Inc. (“CBOE”), Pacific Exchange, Inc. (“PCX”), the Philadelphia Stock Exchange, Inc. (“Phlx”), and the Chicago Stock Exchange (“CHX”) petitioned the Commission to adopt a rule determining that specified portions of the exchanges’ listing standards were substantially similar to the listing standards of the Named Markets.<sup>8</sup> In response to the petitions, and after extensive review of the petitioners’ listing standards, the Commission adopted Rule 146(b), determining that the listing standards of the CBOE, Tier 1 of the PCX, and Tier 1 of the Phlx were substantially similar to those of the Named Markets and that securities listed pursuant to those standards would be deemed covered securities for purposes of Section 18 of the Securities Act.<sup>9</sup>

In its petition, ISE states that it currently trades only standardized options issued and guaranteed by the Options Clearing Corporation (“OCC”), which are also listed on at least one of the four other options exchanges—Amex, CBOE, PCX and Phlx. Accordingly, the options ISE currently trades are by definition “covered securities” for purposes of Section 18 of the Securities Act. However, ISE may, in the future, list standardized options issued and guaranteed by OCC that are not listed on one of the other options exchanges. Accordingly, ISE has petitioned the Commission to amend Rule 146(b) with a determination that its listing standards are substantially similar to those of the Named Markets, and that securities now listed on ISE are

<sup>7</sup> 15 U.S.C. 77r.

<sup>8</sup> See letter from David P. Semak, Vice President, Regulation, PCX, to Arthur Levitt, Jr., Chairman, Commission, dated November 15, 1996; letter from Alger B. Chapman, Chairman, CBOE, to Jonathan G. Katz, Secretary, Commission, dated November 18, 1996; letter from J. Craig Long, Esq., Foley & Lardner, Counsel to CHX, to Jonathan G. Katz, Secretary, Commission, dated February 4, 1997 (“CHX Petition”); and letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 31, 1997.

<sup>9</sup> Securities Act Release No. 7494, Securities Exchange Act Release No. 39542 (January 13, 1998), 63 FR 3032 (January 21, 1998). Review of CHX’s listing program, including its listing standards and operations, is ongoing. CHX has petitioned the Commission to amend Rule 146(b) to include Tier 1 of CHX’s listing standards. See letter from Paul B. O’Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Jonathan G. Katz, Secretary, Commission, dated May 17, 2000.

<sup>1</sup> See National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

<sup>2</sup> 15 U.S.C. 77r(a).

<sup>3</sup> 15 U.S.C. 77r(b)(1). In addition, securities of the same issuer that are equal in seniority or senior to a security listed on a Named Market or national securities exchange designated by the Commission as having substantially similar listing standards to a Named Market are covered securities for purposes of Section 18 of the Securities Act. 15 U.S.C. 77r(b)(1)(C).

<sup>4</sup> Securities Act Release No. 7494, Securities Exchange Act Release No. 39542 (January 13, 1998), 63 FR 3032 (January 21, 1998).

<sup>5</sup> 17 CFR 230.146(b).

<sup>6</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated October 9, 2003.

“covered securities” under Section 18(b) of the Securities Act.<sup>10</sup>

### III. Discussion

The Commission has reviewed the ISE listing standards for options traded on the ISE and preliminarily believes that they are substantially similar to those of Amex. The Commission notes that, under Section 18(b)(1)(A) of the Securities Act, the Commission has the authority to compare the listing standards of a petitioner with those of either the NYSE, Amex, or Nasdaq/NMS. Because Amex is the only Named Market that lists standardized options, the Commission has compared ISE's listing standards with Amex's listing standards.

In addition, the Commission has interpreted the “substantially similar” standard to require listing standards at least as comprehensive as those of the Named Markets.<sup>11</sup> If a petitioner's listing standards are stricter than the Named Markets, then the Commission may still determine that the petitioner's listing standards are substantially similar to the Named Markets. Finally, the Commission notes that differences in language or approach would not necessarily lead to a determination that the listing standards of the petitioner are not substantially similar to those of a Named Market.

**Equity Options.** The ISE requirements for listing equity options and maintaining such listings, which are set forth in ISE Rules 502 and 503, closely track Amex Rules 915 and 916. Specifically, the ISE's original listing requirements pertaining to the public float, distribution of shares and trading volume of the underlying security are identical to those of the Amex.<sup>12</sup> At least 7 million shares of the underlying security must be held by persons other than those required to report their security holdings under Section 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>13</sup> There must also be at least 2,000 holders of the underlying security. Trade volume of the underlying security must be at least 2.4 million shares during the preceding

twelve-month period. For securities that are covered securities as defined under Section 18(b) of the Securities Act, the closing price of the underlying security must be at least \$3 as measured by the highest closing price reported by the primary market in which the security is traded. For underlying securities that are not covered securities, the closing price must be at least \$7.50 for a majority of the business days during the previous three months as measured by the lowest closing price reported in any market in which the security is traded. Finally, if an underlying security does not satisfy the previous closing price requirements, it may be eligible for trading if it satisfies all of ISE's maintenance requirements, is traded on at least one other exchange, and has an average trading volume of at least 5,000 contracts over the preceding three months.<sup>14</sup>

The rules of both ISE and Amex require issuers of the underlying securities to be in full compliance with the Exchange Act. Also, the requirements for securities underlying options are the same under ISE Rule 502 and Amex Rule 915. As is true for equity securities, the ISE and Amex impose the same initial listing requirements for options on American Depositary Receipts (“ADRs”), International Funds, Restructured Companies, Exchange-Traded Fund shares (“ETFs”),<sup>15</sup> and Trust Issued Receipts.<sup>16</sup>

The only difference between the ISE and Amex original listing rules is that Amex members may propose the listing of an option that otherwise meets established listing requirements, but has not been listed on Amex, whereas ISE's members may not. Rather, the ISE exercises discretion in considering potential new listings. The Commission does not believe that this procedural difference in the way options may be considered for listing has any bearing on whether the substantive listing standards are substantially similar.

<sup>14</sup> See ISE Rule 502(b).

<sup>15</sup> ETFs are defined under Amex Rule 915 to include “shares or other securities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities\* \* \*.” See Amex Rule 915 Commentary .06. These securities are referred to as “Fund Shares” in the ISE rules. See ISE Rule 502(h).

<sup>16</sup> Compare Subsections (c), (f)–(h), and (j) of ISE Rule 502 with Subsections .03–.07 of Amex Rule 915.

As noted above, the Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the Named Markets, and differences in language or approach of the listing standards are not dispositive. Accordingly, because the absence of a provision in the ISE rule permitting ISE members to propose the listing of options on the ISE is not germane to the quality of ISE's listing standards, the Commission preliminarily does not believe that this procedural distinction represents a substantial difference or renders the ISE listing standards less comprehensive than those of the Amex.

As with its original listing standards, the ISE's maintenance requirements for its equity options substantively track those of the Amex.<sup>17</sup> With respect to the underlying security of an equity option, the ISE and Amex have identical maintenance requirements regarding the number of publicly traded shares, their distribution, trade volumes and market price. At least 6.3 million shares of the underlying security must be held by persons other than those required to report their security holdings under Section 16(a) of the Exchange Act.<sup>18</sup> There must also be at least 1,600 holders of the underlying security. Trade volume of the underlying security must be at least 1.8 million shares during the preceding twelve month period, and the closing price must be at least \$3 as measured by the closing price reported by the primary market in which the security is traded.<sup>19</sup> Failure to meet any one of these criteria may result in delisting the option.<sup>20</sup>

Both Amex and ISE may withdraw approval for options trading if the issuer of an underlying security that is principally traded on a national securities exchange is delisted from trading on that exchange and neither meets National Market System (“NMS”) criteria nor is traded through the facilities of a national securities association. Amex and ISE may also withdraw approval for options trading on a security that is principally traded through facilities of a national securities association, if such security is no longer designated as an NMS security.<sup>21</sup>

Likewise, the ISE and Amex impose the same maintenance requirements for continued listing of options on ADRs, ETFs, Trust Issued Receipts, and

<sup>10</sup> The Commission notes that, currently, the ISE lists only standardized options and, accordingly, only has listing standards for equity and index options.

<sup>11</sup> Securities Act Release No. 7422, Securities Exchange Act Release No. 38728 (June 9, 1997), 62 FR 32705 (June 17, 1997).

<sup>12</sup> Compare ISE Rule 502 with Amex Rule 915. The Commission notes that no exchange has standards establishing qualifications for issuers of exchange-traded options because all options are issued by the OCC. All options issued by the OCC have the equal protection of OCC's backup system of clearing members' obligations, margin deposits and clearing funds.

<sup>13</sup> 15 U.S.C. 78p(a).

<sup>17</sup> Compare ISE Rule 503 with Amex Rule 916.

<sup>18</sup> 15 U.S.C. 78p(a).

<sup>19</sup> See ISE Rule 503(b).

<sup>20</sup> See ISE Rule 503.

<sup>21</sup> See ISE Rule 503(b)(6); Amex Rule 916 Commentary .01(6).

Holding Company Depository Receipts.<sup>22</sup>

The only difference between the ISE and Amex maintenance requirements is that the Amex rules include an express provision that the exchange will monitor on a daily basis news sources for information of corporate actions, which might indicate that an underlying security no longer meets the requirements for continued approval, whereas ISE Rule 503 does not.<sup>23</sup> The Commission preliminarily believes that the absence of an express monitoring provision in ISE's rules does not represent a significant difference between ISE and Amex maintenance requirements. Each registered exchange has an obligation under Sections 6 and 19(g) of the Exchange Act to comply with its own rules.<sup>24</sup> To comply with these statutory requirements, the ISE must monitor corporate and other events, which may have a bearing on whether a security underlying an option continues to satisfy ISE's maintenance listing standards. The Commission, however, requests comment on whether this difference should impact the determination of whether ISE's rules are "substantially similar" to Amex's rules.

**Index Options.** The Commission preliminarily believes that the ISE and the Amex have substantially similar requirements for stock indices that may underlie index options. With regard to broad-based index options, both the ISE and the Amex require that the listing of a class of options on a new underlying index must be filed with the Commission as a proposed rule change under Section 19(b) of the Exchange Act.<sup>25</sup> Furthermore, the Commission preliminarily believes that the exchanges have substantially similar provisions for the designation of narrow-based indices as eligible to underlie index options, including rules that allow certain options to be traded on certain narrow-based indices using an expedited procedure, which involves submitting to the Commission a Form 19b-4(e) under Rule 19b-4(e) of the Exchange Act.<sup>26</sup> The listing and maintenance requirements for component securities comprising narrow-based index options listed on the ISE appear in all material respects to be substantially similar to those of the Amex.<sup>27</sup> Specifically, the ISE and the

Amex appear to have substantially similar criteria for index components relating to market value, trading volume, calculation of the index, and inclusion of non-U.S. component securities or ADRs.<sup>28</sup> In addition, the Commission preliminarily believes that ISE and Amex requirements for the index regarding weighting, index components, rebalancing, information barriers maintained by broker-dealers, and the dissemination of index values are substantially similar.<sup>29</sup> Likewise, the ISE rules setting forth position and exercise limits, margin requirements, and settlement terms applicable to index options appear to be substantially similar to those of the Amex.<sup>30</sup> Accordingly, the Commission preliminarily believes that the listing standards of the ISE and the Amex for index options are substantially similar.

#### IV. Solicitation of Comments

Based on its review of each exchange's rules, for the reasons set forth above, the Commission preliminarily believes that the original listing standards as well as the continued listing standards for equity options and index options of the ISE are substantially similar to those of the Amex. Accordingly, the Commission preliminarily believes options listed on the ISE should be covered securities and entitled to an exemption from state blue sky provisions as set forth in Section 18(a) of the Securities Act.

The Commission seeks comments on the desirability of amending Rule 146(b) to include the ISE.<sup>31</sup> In particular, commenters may wish to address whether they agree with the Commission's preliminary conclusions that ISE's listing and maintenance standards are substantially similar to those of the Named Markets.

In addition, if ISE options are designated as covered securities under Rule 146(b)(1), then ISE's listing standards would be subject to Rule 146(b)(2). Rule 146(b)(2) under the Securities Act conditions the designation of securities as "covered securities" under Rule 146(b)(1) on the

identified exchange's listing standards continuing to be substantially similar to those of the Named Markets. Thus, under Rule 146(b)(2), the designation of its securities as covered securities would be conditioned on the ISE maintaining listing standards that were substantially similar to those of the Named Markets. Commenters may wish to address the application and effect of Rule 146(b)(2) on the proposal.

The Commission invites commenters to provide views and data as to the costs, benefits and effects associated with the proposed amendments. Finally, in addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the proposed amendment to Rule 146(b).

#### V. Consideration of Promotion of Efficiency, Competition and Capital Formation

As required under the Securities Act,<sup>32</sup> the Commission has preliminarily considered the proposed rule's impact on efficiency, competition and capital formation. Options exchanges are prohibited by Commission rule from prohibiting, conditioning or limiting the listing of any stock options class first listed on another options exchange.<sup>33</sup> Nevertheless, options exchanges do compete for listings of non-equity options such as index options. Thus, as noted above, the Commission preliminarily believes that amending Rule 146(b) to designate options traded on ISE as covered securities offers potential benefits for investors because it would facilitate the ability of ISE to compete for listings, which should increase competition and enhance the overall liquidity of the U.S. securities markets. In addition, the Commission believes that the proposed rule amendment, consistent with Congressional action, is designed to promote efficiency by removing a layer of duplicative regulation. The Commission also preliminarily believes that the proposed amendment to Rule 146(b) should permit ISE to compete with other markets whose options are exempt from state law registration requirements for new options products and listings. Finally, the proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws.

Thus, the Commission preliminarily believes that the proposed amendment

<sup>22</sup> Compare Subsections (g)–(j) of ISE Rule 503 with Subsections .06–.09 of Amex Rule 916.

<sup>23</sup> Compare Amex Rule 916.10 with ISE Rule 503.

<sup>24</sup> 15 U.S.C. 78f(b), 78s(g).

<sup>25</sup> See ISE Rule 2002(a), Amex Rule 901C.01.

<sup>26</sup> Compare ISE Rule 2002(b) with Amex Rule 901C.02.

<sup>27</sup> Compare ISE Rules 502, 2002(c) with Amex Rules 915, 901C.02(d).

<sup>28</sup> Compare ISE Rule 2002(b) with Amex Rule 901C.02.

<sup>29</sup> Compare ISE Rules 2002 and 2003 with Amex Rule 901C.

<sup>30</sup> Compare ISE Rules 413, 417, 418, 709, 1102, 2004–2010, 2012 with Amex Rules 462, 903C, 904C, 905C, 909C, 916C, 918C, 951C, and 980C. The ISE and Amex's disclaimer provisions relating to index options are also substantially similar. Compare ISE Rule 2011 with Amex Rule 902C.

<sup>31</sup> The Commission notes that it has received one comment letter from the OCC, which supports the ISE's petition. See letter to Kelly Riley, Senior Special Counsel, SEC, from James R. McDaniel, Counsel to OCC, Sidley Austin Brown & Wood LLP, dated November 4, 2003.

<sup>32</sup> 15 U.S.C. 77b(b).

<sup>33</sup> See 17 CFR 240.19c–5.

to Rule 146(b) would promote efficiency, competition and capital formation. Commentators should consider the proposed amendment's effect on competition, efficiency and capital formation.

## VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not apply because the proposed amendment to Rule 146(b) does not impose recordkeeping or information collection requirements or other collection of information, which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

## VII. Cost and Benefits of Proposed Rulemaking

Congress amended Section 18 of the Securities Act to exempt covered securities from state registration requirements. These securities are listed on the Named Markets or any other national securities exchange determined by the Commission to have substantially similar listing standards to the Named Markets.<sup>34</sup> Consistent with statutory authority, the Commission proposes to determine that the listing standards of the ISE are substantially similar to those of the Amex, the only Named Market that lists standardized options. Options listed on the ISE would therefore be covered securities subject only to federal regulation.

By exempting options listed on ISE from state law registration requirements, we expect that the listing process will become easier as one layer of regulation is eliminated. Moreover, we also expect adoption of the rule to reduce the administrative burden ISE and the OCC face inasmuch as compliance with state blue sky law requirements will be preempted.

The Commission also preliminarily believes that the proposed amendment to Rule 146(b) should permit ISE to compete with other markets whose options are exempt from state law registration requirements for new options products and listings. This result would likely enhance competition and, potentially, liquidity, thus benefiting market participants and the public.

The proposed amendment would eliminate state registration of options listed with the ISE. There may be a cost to investors through the loss of the benefits of state registration and oversight, although the cost is difficult to quantify. We nevertheless believe that Congress contemplated these costs in relation to the economic benefits of

exempting covered securities from state regulation. The Commission, however, is considering the costs and benefits of the proposed amendment to Rule 146(b) and requests commenters to provide views and supporting information as to the costs and benefits associated with this proposal.

## VIII. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act<sup>35</sup> requires the Commission to undertake an initial regulatory flexibility analysis of the proposed amendment to Rule 146 on small entities unless the Commission certifies that the proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>36</sup> For purposes of Commission rulemaking in connection the Regulatory Flexibility Act, an issuer is a small business if its "total assets on the last day of its most recent fiscal year were \$5,000,000 or less."<sup>37</sup> An exchange is a small business if it has been exempt from the reporting requirements of Rule 11Aa3-1<sup>38</sup> and it is not affiliated with any person other than a natural person that is not a small business.<sup>39</sup> The Commission believes that the proposal to amend Rule 146(b) will not affect small entities because all options listed on the ISE are issued by the OCC, which is not a small entity because it has assets well in excess of \$5 million.<sup>40</sup> Further, the ISE is not a small business.<sup>41</sup>

Accordingly, the Commission hereby certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act,<sup>42</sup> that amending Rule 146(b) would not have a significant economic impact on a substantial number of small entities. The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed amendment to Rule 146(b) could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

<sup>35</sup> 5 U.S.C. 603(a).

<sup>36</sup> 5 U.S.C. 605(b).

<sup>37</sup> 17 CFR 230.157. *See also* 17 CFR 240.0-10(a).

<sup>38</sup> 17 CFR 240.11Aa3-1.

<sup>39</sup> 17 CFR 240.0-10(e).

<sup>40</sup> 17 CFR 240.0-10(d). As of December 31, 2002, OCC reported total assets of nearly \$1.5 billion (\$1,492,480,906). *See* OCC 2002 Annual Report, at 26 (Statements of Consolidated Financial Condition) (available at <http://www.optionsclearing.com>).

<sup>41</sup> 17 CFR 240.0-10(e).

<sup>42</sup> 5 U.S.C. 605(b).

## IX. Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Enforcement Fairness Act of 1996, a rule is "major" if it results or is likely to result in:

- (i) an annual effect on the economy of \$100 million or more;
- (ii) a major increase in costs or prices for consumers or individual industries;
- or
- (iii) significant adverse effects on competition, investment, or innovation.<sup>43</sup>

The Commission requests comment regarding the potential impact of the proposed amendment on the economy on an annual basis. Commenters should provide empirical data to support their views to the extent possible.

## X. Statutory Authority

The Commission is proposing an amendment to Rule 146 pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], particularly Sections 18(b)(1)(B) and 19(a) [15 U.S.C. 77r(b)(1)(B) and 77s(a)].

## Text of the Proposed Rule

### List of Subjects in 17 CFR Part 230

Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

### PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

2. Section 230.146 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(2) and by adding paragraph (b)(1)(iv) as follows:

### § 230.146 Rules under section 18 of the Act.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(ii) Tier I of the Philadelphia Stock Exchange, Incorporated;

(iii) The Chicago Board Options Exchange, Incorporated; and

<sup>43</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

<sup>34</sup> 15 U.S.C. 77r(b)(1)(B).

(iv) Options listed on the International Securities Exchange, Incorporated.

(2) The designation of securities in paragraphs (b)(1)(i) through (iv) of this section as covered securities is

conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, Amex, or Nasdaq/NMS.

Dated: March 22, 2004.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-6815 Filed 3-25-04; 8:45 am]

**BILLING CODE 8010-01-P**