

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45505; File No. SR-Amex-2002-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend the Original Listing Criteria for Underlying Securities Contained in Amex Rule 915

March 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on March 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 provide an alternative original listing criteria for individual equity options that otherwise meet the standards in Commentary .01 to Rule 915 except for the requirement that the underlying security be at least \$7.50.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Rule 915. Criteria for Underlying Securities

- (a) No Change.
- (b) No Change.

Commentary

.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. There are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their security holdings under Section 16(a) of the Securities Exchange Act of 1934.

2. There are a minimum of 2,000 holders of the underlying security.

3. Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve months.

4. *Either (i) [T]he 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. The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934.

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 IV 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

Commentary .01 to Amex Rule 915 sets forth the guidelines that an underlying individual equity security must meet before the Exchange may initially list options on that security. The Exchange states that these guidelines or requirements are uniform among four (4) out of the five (5) options exchanges. The exception is the International Securities Exchange LLC ("ISE"), because of recent Commission approval that eliminated the \$7.50 standard for an underlying security when such option is otherwise listed and traded on another options exchange and has an average daily trading volume ("ADTV") over the last three (3)

calendar months of at least 5,000 contracts.³

The Exchange notes that its requirements for listing additional series of an existing listed option (the "maintenance listing standards") are less stringent. In particular, additional series may be added pursuant to Commentary .02 to Rule 916 if the underlying security is at least \$3 in the primary market. The Exchange believes that this less stringent maintenance listing standard is permitted, in part, because the Exchange's other guidelines assure that options would be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards. Therefore, according to the Exchange, the continued application of the Exchange's other guidelines provide 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 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 Exchange believes that although the continued listing requirements are generally uniform among the options exchanges, with the exception of the ISE, the application of these 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 options classes because the price of the underlying security had fallen below the initial listing requirement since the time such options were first listed on another exchange. Because the underlying security would continue to meet the lower maintenance listing standards, the other options exchange(s) may continue to trade such options—and list additional series—while the Amex may not list any options on such underlying security.

To address this situation, the Exchange proposes an alternative original listing requirement applicable to the underlying security's price during the three calendar months preceding an options listing. Specifically, Commentary .01 to Amex Rule 915 currently provides that the market price per share of the underlying security must have been at least \$7.50 for the majority of business days during the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45220 (December 31, 2002), 67 FR 760 January 7, 2002) (SR-ISE-2001-33).

three calendar months preceding the date of selection for listing. The Exchange proposes to amend Commentary .01 to provide that, for underlying securities that satisfy all of the initial listing requirements other than the \$7.50 per share price requirement, the Exchange would be permitted to list options on the securities so long as: (1) The underlying security meets the guidelines for continued approval contained in Amex Rule 916; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the ADTV for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The Exchange believes that this proposal is narrowly drafted to address the circumstances where an actively-traded options class is currently ineligible for listing on the Amex while at the same time, such option is trading on another options exchange. The Exchange notes that when an underlying security meets the maintenance listing standards and at least one other exchange trades options on the underlying security, the options already are available to the investing public. Therefore, the Exchange notes that the current proposal would not introduce any additional listed options classes.

The Exchange also believes the proposed alternative original listing criteria's limitation to options that are actively-traded (*i.e.*, options with an ADTV of at least 5,000 contracts over the last three calendar months) should serve to allay any concerns regarding the listing of options that may be inappropriate. Therefore, the Exchange maintains that the proposed alternative listing standard would be limited to those options with active trading, indicating that there is widespread investor interest. Because these options are actively-traded in other markets, the Exchange further believes that there would be no investor protection concerns with listing such options on the Exchange. In addition, the Exchange believes that listing these options on the Amex would enhance competition and benefit investors.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general and furthers the objectives of section 6(b)(5)⁵ in particular in that an

exchange have rules that are 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 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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and paragraph (f)(6) of Rule 19b-4⁷ 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.

The Commission notes that under Rule 19b-4(f)(6)(iii), 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. The Exchange has requested that the Commission waive the 30-day operative date. The Exchange contends that acceleration of the operative date is consistent with the protection of investors and the public interest because the language of this proposed rule is substantially similar to rule language that was put out for notice and comment when ISE submitted its proposed rule change. For this reason,

consistent with section 19(b)(2) of the Act,⁸ the Commission finds good cause to waive the 30-day operative period.⁹

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 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-2002-13 and should be submitted by April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-5815 Filed 3-8-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45501; File No. SR-NASD-2002-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees Applicable to the NASD Alternative Display Facility

March 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February

⁸ 15 U.S.C. 78s(b)(2).

⁹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).