

designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

#### 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 submissions should refer to File No. SR-Amex-2003-40 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47862; File No. SR-Amex-2003-38]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

May 14, 2003.

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 May 1,

<sup>14</sup> 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).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

2003, 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 the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 Amex proposes to amend Exchange Rule 916, which governs the withdrawal of approval for securities underlying options traded on the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

Rule 916. Withdrawal of Approval of Underlying Securities  
No Change  
Commentary.

01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, or 3 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of the Securities Exchange Act of 1934.

2. There are fewer than 1,600 holders of the underlying security.

3. The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

4. Subject to Commentary .02 below, 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 (as that term is defined in Rule 900(26)) in which the underlying security traded.

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.

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

7. If an underlying security is approved for options listing and trading under the provisions of Commentary .05 of Rule 915, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructured Security (as therein defined), including "when issued" trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs 3. and 4. of the Commentary .01 are satisfied, provided however, that in the case of a Restructured Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 915, such trading volume requirements must be satisfied based on the trading volume history of the Restructured Security.

.02-.09 No Change

.10 *In determining whether any of the events specified in Commentary .01(1) or (2) of this Rule have occurred, the Exchange will monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy-backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01 (1) or (2) of this Rule, the Exchange will not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.*

\* \* \* \* \*

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

## 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 parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Exchange Rule 916 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Specifically, Commentary .01(1) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of Act<sup>4</sup> (the "float" requirement). Commentary .01(2) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 1,600 holders of the underlying security (the "holders" requirement). The Exchange is now proposing to add Commentary .10 to Exchange Rule 916 to clarify the manner in which the Exchange determines whether the "float" and "holders" requirements found in Commentary .01 to Exchange Rule 916 are met.<sup>5</sup>

The Exchange proposes to expressly state that in determining whether any of the events specified in Commentary .01(1) or (2) to Exchange Rule 916 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash

dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01(1) or (2) to Exchange Rule 916, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) to Exchange Rule 916 have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.<sup>6</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on

which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,<sup>9</sup> it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Amex has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is the same in all material respects to another proposal submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and recently approved by the Commission.<sup>12</sup> As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.<sup>13</sup>

At any time within 60 days of the filing of this 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.

## 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

<sup>9</sup> See e-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 15, 2003.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> See Securities Exchange Act Release No. 47400 (February 25, 2003), 68 FR 10286 (March 4, 2003).

<sup>13</sup> 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).

<sup>4</sup> 15 U.S.C. 78p(a).

<sup>5</sup> Proposed Commentary .10 to Exchange Rule 916 will clarify how the Exchange will determine whether the float of an underlying security is less than 6.3 million shares or the number of holders of the underlying security is fewer than 1,600.

<sup>6</sup> The Exchange represents that existing Commentary .03 to Exchange Rule 916 would continue to apply when the Exchange considers whether any of the events specified in Commentary .01 have occurred with respect to an underlying security. Specifically, Commentary .03 to Exchange Rule 916 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 Section. 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-2003-38 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47826; File No. SR-DTC-2002-19]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Establish an Inventory Management System

May 9, 2003

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 19, 2002, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

DTC is seeking to establish an Inventory Management System ("IMS") which will provide new central control capabilities for the settlement process including new capabilities for transaction authorization and new controls for the management of pending deliveries.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The industry's prolonged discussions of the development of a new matching model that promotes straight through processing ("STP") for institutional transactions identified a series of deficiencies in the processing systems for settling those transactions.<sup>3</sup> Industry members, particularly members of the Securities Industry Association's Institutional Trade Processing Committee, pressed DTC to develop a series of capabilities to permit participants to centrally manage their own settlements as a way of furthering STP in the settlement process itself. A working group under the Settlement Advisory Board of The Depository Trust & Clearing Corporation ("DTCC") assisted in crafting the framework for IMS.

Today, participants control the processing of their institutional deliveries received from a matching utility (such as Omgeo's TradeSuite system) through the Authorization and Exception system ("ANE"). ANE will not send a delivery to the processing system without an affirmative authorization from the delivering participant. This affirmative authorization is given either on an item-by-item basis or through a "global" authorization. A participant can submit exceptions to explicitly withhold a delivery from processing. Conversely, deliveries from the National Securities Clearing Corporation's ("NSCC's") Continuous Net Settlement system ("CNS") are automatically processed

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> The present U.S. system has evolved over time in different ways for different instruments, participants, and marketplaces. While the current system has met the needs of the industry well, the result is an intricate web of processing steps that are not standardized and are quite complex and inflexible. Many participants manage their processing with late-cycle interventions such as (a) withholding or "exempting" trades from more automatic processes, subsequently intervening in the system to reintroduce the transaction when they are ready to process it and (b) reversing or "reclaiming" problem transactions before or after settlement has occurred. These practices late in the settlement cycle disrupt automated processing and contribute to the incidence of fails, which creates costs and risks for participants and for the system as a whole.

unless the participant instructs NSCC otherwise via an exemption. Other deliveries (e.g., Night Deliver Orders ["NDOs"]) along with authorized institutional deliveries and CNS deliveries are processed by DTC at predefined times. All of these transactions may pend ("recycle") in the event of a position deficiency or a problem with system controls. Recycles are processed based on one of two recycle options; a "First In First Out" process or a DTC preestablished recycle queue.

Participants generally have sought greater control over the processing of their deliveries than these procedures permit. Therefore, participants have built internal inventory management systems or adopted internal manual procedures that exempt deliveries from automatic processing so that the participants can control the sequence and timing of their deliveries. This has created an STP shortfall, caused the industry to build redundant systems, and has increased the number of reclaims.

DTC is now seeking to allow a participant to choose how it wants to authorize its deliveries. The key components of IMS include:

- (1) New authorization capabilities (replacing the ANE system) which participants can use to stage transactions for automated settlement;
- (2) A new "profiling" system which will allow participants greater control over the timing and order of their deliveries by transaction type and asset class via predefined profiles to eliminate today's frequent direct intervention in the settlement process that inhibits STP;

(3) Capabilities permitting the linkage of transactions so particular receive transactions are associated with particular deliveries;<sup>4</sup> and

(4) Controls permitting the retention of failed deliveries for the following settlement day eliminating participants' need to reinput these instructions.

As a result of industry feedback, DTC has designed IMS to permit authorization and control of different transaction types (e.g., NDOs, etc.) within each asset class (e.g., equities) and to permit increased authorization options. The creation of IMS also makes possible a warehousing<sup>5</sup> facility for

<sup>4</sup> Such a linkage would permit customers to associate securities they expected to receive with specific securities they expected to deliver so that they no longer need to exempt a delivery until they receive providing the securities for it has been processed.

<sup>5</sup> DTC's current front-end edits do not permit a delivery to have a future settlement date. The current NDO function only permits deliveries to

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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