

Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 14th day of November 2005.

For the Nuclear Regulatory Commission.

**James L. Cameron,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region III.*

[FR Doc. E5-6459 Filed 11-22-05; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 28, 2005:

An Open Meeting will be held on Tuesday, November 29, 2005 at 10 a.m. in Room L-002, the Auditorium, and a Closed Meeting will be held on Wednesday, November 30, 2005 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c),(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Open Meeting scheduled for Tuesday, November, 29, 2005 will be:

The Commission will consider whether to propose amendments to the proxy rules under Section 14 of the Securities Exchange Act of 1934. The proposed amendments would provide an alternative model by which companies conducting proxy solicitations could satisfy the Rule 14a-3 requirement to furnish proxy materials by posting those proxy materials on an Internet Web site and providing shareholders with notice of the Internet availability of the materials. Other soliciting persons also would be permitted to follow the proposed alternative model.

The subject matter of the Closed Meeting scheduled for Wednesday, November 30, 2005 will be:

Formal orders of investigations; Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Opinions; and a Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: November 18, 2005.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-23250 Filed 11-18-05; 4:07 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52781; File No. SR-Amex-2005-069]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Relating to Listing Standards for Broad-Based Index Options and Concentration Limits for Narrow-Based Index Option Listing Standards

November 16, 2005.

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 June 24, 2005, 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 and II below, which Items have been prepared by the Amex. On August 17, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 13, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On September 28, 2005, the Amex filed Amendment No. 3 to the proposed rule

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> In Amendment No. 2, the Amex made minor revisions to the proposed rule text and clarified that the request for expedited review and accelerated effectiveness set forth in Amendment No. 1 includes the revision to concentration limits for narrow-based index options.

change.<sup>5</sup> On September 30, 2005, the Amex filed Amendment No. 4 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to adopt new Commentary .02 to Amex Rule 901C and amend Amex Rule 904C to adopt generic listing standards and position and exercise limits for broad-based index options. The Exchange also proposes to revise the concentration limitation for narrow-based index option generic listing standards in Commentary .03 to Amex Rule 901C. The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary 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, the 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 III below. The 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Listing and Maintenance Standards and Position and Exercise Limits for Broad-Based Index Options

The Amex proposes to adopt new Commentary .02(a) to Amex Rule 901C to establish initial listing standards for broad-based index options. The proposal will allow the Amex to list, pursuant to Rule 19b-4(e) under the

<sup>5</sup> In Amendment No. 3, the Amex set forth its interpretation of the term "major market data vendor" in proposed Commentary .02(a)(11) to Rule 901C to include the Options Price Reporting Authority (OPRA) and the Consolidated Tape Association (CTA), as well as other securities information processors. The Exchange also set forth how the term "vendor" is defined in Rule 600(b)(83) of Regulation NMS under the Act.

<sup>6</sup> In Amendment No. 4, the Amex made minor revisions to the proposed rule text.

Act,<sup>7</sup> broad-based index options that meet the “generic” listing standards in new Commentary .02(a) to Amex Rule 901C. The listing standards require, among other things, that the underlying index be a broad stock index group, as defined in Amex Rule 900C(b)(1); that options on the index be a.m.-settled; that the index be capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted; and that the index be comprised of at least 50 securities, all of which must be “NMS stocks,” as defined in Rule 600 of Regulation NMS.<sup>8</sup> In addition, new Commentary .02(a) to Amex Rule 901C requires that the index’s component securities meet certain minimum market capitalization and average daily trading volume requirements; that no single component account for more than 10% of the weight of the index and that the five highest weighted components represent no more than 33% of the weight of the index; that the index value be widely disseminated at least every 15 seconds; and that the Amex have written surveillance procedures in place with respect to the index options.

The Amex also proposes to adopt new Commentary .02(b) to Amex Rule 901C, which establishes maintenance standards for broad-based index options listed pursuant to new Commentary .02(a) to Amex Rule 901C. In addition, the Amex proposes to amend Amex Rule 904C to establish position limit and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to new Commentary .02(a) to Amex Rule 901C.<sup>9</sup>

#### Narrow-Based Index Options “Generic” Listing Standards

Commentary .02(a)(7) (redesignated as Commentary .03(a)(7)) to Amex Rule 901C provides that no single component security may represent more than 25% of the weight of the index, and that the

five highest weighted component securities in the index may not, in the aggregate, account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange proposes to amend Commentary .02(a)(7) to increase the 25% concentration limit for the highest weighted component stock to 30%, and to increase the concentration limit for the five most highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%. In addition, the continuing listing standard found in Commentary .02(d)(1) (redesignated as Commentary .03(d)(1)) to Amex Rule 901C will be similarly revised to reflect the proposed increase in percentage weights of a single issuer to 30% and the five most highly weighted stocks in an index consisting of fewer than 25 component securities to 65%. The Exchange believes that the proposed revision to Commentary .02 to Amex Rule 901C should provide additional flexibility in the listing and trading of narrow-based index options while continuing to serve the intended purpose of preventing a single security or small number of securities from dominating an index.<sup>10</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>11</sup> in general and furthers the objectives of section 6(b)(5)<sup>12</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, 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

The Exchange did not receive any written comments on the proposed rule change.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR–Amex–2005–069 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–2005–069. 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 Amex. 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–2005–069 and should be submitted on or before December 14, 2005.

<sup>7</sup> 17 CFR 240.19b–4(e).

<sup>8</sup> See Amendment No. 4, *supra* note 6. Rule 600 of Regulation NMS defines an “NMS stock” to mean “any NMS security other than an option.” An “NMS security” is “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.” See 17 CFR 242.600.

<sup>9</sup> See Amendment No. 4, *supra* note 6. Amex Rule 905C establishes exercise limits for index options at the same levels as the corresponding index option’s position limits. The Exchange also proposes to make minor technical changes to the rule text of Amex Rule 904C. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on August 30, 2005.

<sup>10</sup> See Securities Exchange Act Release No. 51267 (February 25, 2005), 70 FR 10715 (March 4, 2005) (approving an identical proposal by the International Securities Exchange, Inc. (“ISE”) to increase the concentration limits for narrow-based index option generic listing standards).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

To list options on a particular broad-based index, the Amex currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

As described more fully above, the Amex proposes to establish listing standards for broad-based index options. The Commission's approval of the Amex's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b-4(e), without constituting a proposed rule change within the meaning of section 19(b) of the Act and Rule 19b-4, for which notice and comment and Commission approval is necessary.<sup>15</sup> The Amex's ability to rely on Rule 19b-4(e) to list broad-based index options

that meet the requirements of Commentary .02(a) to Amex Rule 901C potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

The Commission notes that the Amex has represented that it has adequate trading rules, procedures, listing standards, and surveillance program for broad-based index options. Amex's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C. Other existing Amex rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, the Amex proposes to establish position and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C.<sup>16</sup> The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The Amex represents that it has adequate surveillance procedures for broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C. In addition, because Commentary .02(a) to Amex Rule 901C requires that each component of an index be an "NMS stock," as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through Nasdaq. Accordingly, the Amex will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group ("ISG").<sup>17</sup> Commentary .02(a) to Amex Rule 901C also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the Amex and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.<sup>18</sup>

The Commission believes that these requirements will help to ensure that the Amex has the ability to monitor trading in broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C and in the component securities of the underlying indexes.

The Commission believes that the requirements in Commentary .02(a) to Amex Rule 901C regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, Commentary .02(a) to Amex Rule 901C requires that the underlying index be a "broad stock index group," as defined in Amex Rule 900C(b)(1).<sup>19</sup> The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in Commentary .02(a) to Amex Rule 901C that the current index value be widely disseminated at least once every 15 seconds by the one or more major market data vendors<sup>20</sup> during the time an index option trades on the Amex should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in Commentary .02(a) to Amex Rule 901C that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.<sup>21</sup>

The Commission believes that increasing the concentration limits for narrow-based index options listed pursuant to Commentary .03 to Amex

securities exchange or Nasdaq, where there is last sale reporting.

<sup>19</sup> Amex Rule 900C(b)(1) defines "broad stock index group" to mean a stock index group relating to a stock index which reflects representative stock market values or prices of a broad segment of the stock market.

<sup>20</sup> The Amex has set forth its interpretation of the term "major market data vendor" for the purposes of Commentary .02(a)(11) to Amex Rule 901C to include the OPRA and the CTA, as well as other securities information processors. See Amendment No. 3, *supra* note 5.

<sup>21</sup> See, e.g., Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a Chicago Board Options Exchange, Incorporated proposal to establish opening price settlement for S&P 500 Index options).

<sup>13</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>16</sup> See Amendment No. 4, *supra* note 6.

<sup>17</sup> The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the National Association of Securities Dealers, Inc., are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

<sup>18</sup> However, such non-U.S. index components, as "NMS stocks," would be registered under Section 12 of the Act and listed and traded on a national

Rule 901C should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted. The proposed rule change should also reduce instances where an index option listed on the Exchange is temporarily out of compliance with the concentration limits set forth under Commentary .03 to Amex Rule 901C because of changes in the market value of the underlying index components. Lastly, the Commission believes that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a single security or a small number of securities to dominate an index.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the ISE.<sup>22</sup> In addition, the proposal implements concentration limits for narrow-based index options substantially identical to those previously approved for the Philadelphia Stock Exchange, Inc., which were subject to the full comment period with no comments received,<sup>23</sup> and for the ISE, which were approved by the Commission on an accelerated basis.<sup>24</sup>

The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>25</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-Amex-2005-069), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-6447 Filed 11-22-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52782; File No. SR-Amex-2004-74]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Commentary .01(5) to Amex Rule 916 and Amendment to Amex Rules Relating to the Definition of "NMS Stock"

November 16, 2005.

On August 27, 2004, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to eliminate Commentary .01(5) to Amex Rule 916 ("Commentary .01(5)"). The proposal would permit the opening of new option series on an underlying security previously approved for Amex option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 26, 2005, Amex amended the proposal to replace the term "national market system security" with the term "NMS stock" in its rules for consistency with Regulation NMS.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.<sup>4</sup> The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a

national securities exchange.<sup>5</sup> The Commission believes that the elimination of Commentary .01(5) is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires that rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Commentary .01(5) prevents Amex from opening new series of options covering the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that may more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination of Commentary .01(5) could help reduce investor confusion arising from inconsistent treatment of the underlying security and options covering the underlying security. Finally, the Commission notes that pursuant to Amex rule, the underlying security will not be deemed to meet Amex's requirements for continued approval if such underlying security is not subject to an effective transaction reporting plan and other requirements that address the liquidity and pricing of the underlying security.<sup>7</sup> Amex has represented it has procedures in place to monitor whether the underlying security continues to trade or is delisted from its primary market and will cease opening new series of options in such security and allow the existing series of options to expire. Amex has also represented that if the underlying security has been halted or suspended in its primary market, Amex may halt trading in the option class pursuant to Amex Rule 918(b) and shall halt trading pursuant to

<sup>27</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.

<sup>3</sup> In Amendment No. 1, Amex proposed to amend Amex Rule 915(a) and Commentary .01(6) to Amex Rule 916, in order to substitute the term "NMS stock" for the term "national market system security," for consistency with Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>4</sup> See Securities Exchange Act Release No. 52563 (October 4, 2005), 70 FR 59380.

<sup>5</sup> The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See proposed Commentary .01(5) to Amex Rule 916 (currently Commentary .01(6) to Amex Rule 916).

<sup>22</sup> See Securities Exchange Act Release No. 52578 (October 7, 2005); 70 FR 60590 (October 18, 2005).

<sup>23</sup> See Securities Exchange Act Release No. 50945 (December 29, 2004), 70 FR 1498 (January 7, 2005).

<sup>24</sup> See *supra* note 10.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> *Id.*