

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39402; File No. SR-Amex-97-46]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities

December 4, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"),<sup>1</sup> notice is hereby given that on November 25, 1997, the American Stock Exchange, Incorporated ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b-4 under the Act<sup>2</sup> which renders the proposal effective upon receipt of this filing by the Commission.<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

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stock, bonds and debentures and warrants. The Amex proposes to list and trade commodity index preferred or debt securities ("ComPS") on futures contracts for: corn; soybeans; wheat; a corn, soybean and wheat index ("Agricultural Index"); the "total return" variation of the J.P. Morgan Commodity Index ("JPMCI"); the "excess return" variation of the JPMCI ("JPMCI:X"); and the total return and excess return versions of the Energy ("JPMCI:E"), Base Metal ("JPMCI:B") and Precious Metal ("JPMCI:P")

subindices of the JPMCI.<sup>4</sup> An excess return represents the cumulative returns of investing in unleveraged positions in nearby commodity futures contracts and constantly rolling the position forward to the next designated contract as the contract nears expiration. A total return consists of the excess return plus the return on the three-month Treasury Bills. In 1996, the Commission approved ComPS overlying various financial instruments for listing on both the Amex and the New York Stock Exchange, Incorporated ("NYSE").<sup>5</sup>

#### 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 IV below. The self-regulatory organization 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

As previously stated, the Amex proposes to list for trading ComPS overlying futures contracts for: corn; soybeans; wheat; the Agricultural Index; the JPMCI; the JPMCI:X; the JPMCI:E; the JPMCI:B; and the JPMCI:P. The ComPS and the issuer of the ComPS will conform to the Amex's listing guidelines under Section 107A of the *Company Guide*.<sup>6</sup> Accordingly, all issuances of

ComPS must have: a public distribution of one million trading units; 400 holders; and a market value of not less than \$4 million. The Exchange also will require that the issuer have a minimum tangible net worth of \$150 million.

Holders of ComPS may receive a dividend or interest payment as applicable on the face value of their securities. The frequency and rate of the dividend or interest payment varies from issue to issue based upon prevailing interest rates and other factors. In addition, investors will receive at maturity a payment linked to the value of an index based upon a single commodity in accordance with the following formula: Face Amount × (Ending Index Value/Beginning Index Value) – Factor.

The "Beginning Index Value" is announced at the time of the offering. The "Ending Index Value" is based upon a 10 day average of the daily index value computed during the determination period prior to the redemption date. The "Factor" represents the costs of issuing and hedging the securities and also may include the future value of the stated dividend or interest payment (if any).

Commodity prices for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked commodity over at least a ten business day period. The securities will have a term of from two to ten years. Holders of the securities have no claim to any of the underlying physical linked commodities.<sup>7</sup>

(a) *Design of the Underlying Instruments.* The Amex asserts that the futures contracts are all actively traded for: Corn, soybeans, and wheat on the Board of Trade of the City of Chicago ("CBOT"); the base metal components of the JPMCI and JPMCI:X on the London Mercantile Exchange ("LME"); the energy components of the JPMCI and JPMCI:X on the New York Mercantile Exchange ("NYMEX"); and the precious metal components of the JPMCI and JPMCI:X of the Comex division of the NYMEX ("COMEX"). The Amex asserts that prices for all of the above commodities are widely reported by vendors of financial information and the press. Information

to the staff of the CFTC when the underwriter first proposed the structure for ComPS overlying individual commodities in 1995. The CFTC raised no objection to the structure. See Amex Individual ComPS Order, *id.*

<sup>7</sup> Amex Call, *supra* note 4.

<sup>4</sup> Telephone call between Bill Floyd-Jones, Assistant General Counsel, Amex and Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC on December 1, 1997 ("Amex Call").

<sup>5</sup> Securities Exchange Act Release No. 36885 (February 26, 1996) 61 FR 8315 (March 4, 1996) (order approving the listing and trading of ComPS on the Amex linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X ("Amex Individual ComPS Order")) and Securities Exchange Act Release No. 37188 (May 9, 1996) 61 FR 24846 (May 16, 1996) (order approving the listing and trading of commodity futures index preferred securities ("CFIPs") on the NYSE linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X ("NYSE Individual CFIPs Order")).

<sup>6</sup> The proposed underwriter of the ComPS has advised the Exchange that the securities will comply with the "hybrid exemption" of the Commodity Futures Trading Commission ("CFTC") under 17 CFR Part 34. The underwriter has further advised the Exchange that it presented a description of the structure and sample term sheet of ComPS

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

<sup>2</sup> 17 CFR 240.19b-4(e)(6).

<sup>3</sup> The Exchange has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b-4(e)(6) under the Act.

regarding the proposed underlying contracts follows:<sup>8</sup>

Underlying futures	1996 average open interest (billions)	1996 ADT volume (millions)	Contract month	Description
Corn .....	\$6.6 .....	\$1.4	Mar, May, Jul, Dec .....	No. 2 yellow corn & substitutes as specified by CBOT rules.
Soybeans .....	\$7.0 .....	\$2.1	Jan, Mar, May, Jul, & Nov.	No. 2 yellow soybeans & substitutes as specified by CBOT rules.
Wheat .....	\$2.0 .....	\$516	Mar, Jul, Dec .....	Hard winter wheat & substitute grades as specified by CBOT rules.

The following commodities comprise the JPMCI and JPMCI:X:

Name/units	Market	Units per contract	Contracts in index
Aluminum \$/Metric Tons .....	LME (MT)	25 tons .....	3rd Wed of Mar, Jun, Sep and Dec.
Copper \$/MT .....	LME	25 tons .....	3rd Wed of Mar, Jun, Sep and Dec.
Nickel \$/MT .....	LME	6 tons .....	3rd Wed of Mar, Jun, Sep and Dec.
Zinc \$/MT .....	LME	25 tons .....	3rd Wed of Mar, Jun, Sep and Dec.
Heat Oil \$/gal .....	NYMEX	42,000 gal .....	Every month.
Nat Gas \$/MM BTU .....	NYMEX	10,000 MM BTU ...	Every month.
Unleaded Gas \$/gal .....	NYMEX	42,000 gal .....	Every month.
WTI Lt Swt Crude Oil \$/BBL .....	NYMEX	1,000 bbl .....	Every month.
Platinum \$/troy ounce .....	NYMEX	50 troy oz .....	Jan, Apr, Jul, Oct.
Gold \$/troy ounce .....	COMEX	100 troy oz .....	Feb, Apr, Jun, Aug, and Dec.
Silver \$/troy ounce .....	COMEX	5,000 troy oz .....	Mar, May, Jul, Sep and Dec.

The relative weighting of the various commodities in the JPMCI:E, JPMCI:B, JPMCI:P and Agricultural Index are as follows:

Component	Subindex	Weight in subindex (percent)
Aluminum .....	Base metal .....	40.91
Copper .....	Base metals .....	36.36
Nickel .....	Base metals .....	9.09
Zinc .....	Base metals .....	13.64
Crude Oil .....	Energy .....	60.00
Heating Oil .....	Energy .....	18.18
Unleaded Gas .....	Energy .....	9.09
Natural Gas .....	Energy .....	12.73
Gold .....	Precious metals .....	65.22
Silver .....	Precious metals .....	21.74
Platinum .....	Precious metals .....	13.04
Corn .....	Agricultural .....	33.33
Soybeans .....	Agricultural .....	33.33
Wheat .....	Agricultural .....	33.33

Based on the foregoing information and for the following reason, the Exchange believes that the JPMCI and the JPMCI:X are diversified indices of industrial commodities. The JPMCI is a weighted arithmetic average of total returns afforded by an investment in liquid exchange traded futures on eleven industrial commodities. In addition, the Exchange notes that the Commission has previously reviewed and approved the listing of a security which was linked to the performance of the JPMCI or the JPMCI:X.<sup>9</sup>

b. *Maintenance of Underlying Instruments.* It is anticipated that the contract or contracts underlying a particular issue of ComPS will remain unchanged during the term of the instrument. Certain developments, however, may necessitate changes with respect to the underlying contract or contracts.<sup>10</sup> Decisions regarding such changes will be made by J.P. Morgan upon the advice of the JPMCI Policy Committee, a neutral business committee. This committee consists of senior employees in the commodities

and research areas of J.P. Morgan as well as independent and academic experts. Personnel from J.P. Morgan's Commodities group serve only in an advisory, non-voting role on the committee. J.P. Morgan will immediately notify the Exchange and vendors of financial information if there is a change in the design, composition or calculation of the securities.

If it becomes necessary to choose a replacement price source for the securities, the new price source will meet the following criteria: (i) it will be

<sup>8</sup>For liquidity purposes, JPMCI and JPMCI:X indices skip May and September wheat, September corn and August and September soybeans in the designated contract definitions.

<sup>9</sup>Securities Exchange Act Release No. 35581 (March 21, 1995) 60 FR 15804 (March 27, 1997)

(order approving the listing and trading of commodity linked intermediate term notes ("COINs") overlying the JPMCI and the JPMC:X on the Amex).

<sup>10</sup>Such developments could include, among other things, changing liquidity conditions or the

discontinuation of existing contracts, the emergence of new "benchmark" contracts for the particular linked commodity or the imposition of a tax or other charge on transactions.

priced in U.S. dollars, or if priced in a foreign currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible in U.S. currency, (ii) it will be traded on a regulated futures exchange in the U.S., Canada, U.K., Japan, Singapore or an O.E.C.D. country,<sup>11</sup> and (iii) it will have a minimum annual volume of 300,000 contracts of \$500 million. The underwriter will immediately notify the Exchange and vendors of financial information in the event that there is a change in the futures contract underlying a particular series of ComPS.

In the event that a determination is made to change a contract related to an issue of ComPS and an appropriate benchmark replacement contract is identified, the substitution of the new contract for the old only will be done where: (1) the Exchange has established a comprehensive information sharing agreement with the market or self-regulator for the replacement contract, or (2) the SEC has established suitable alternative agreements with an appropriate regulator of the market for the replacement contract.

When there is no suitable benchmark replacement contract or, there is suitable benchmark contract but the Exchange's or the Commission's information sharing arrangement do not meet the above criteria, in the case of ComPS on a single commodity, the affected ComPS either will be called by the issuer or the payment to be made to holders at maturity will be fixed as of such time using prices derived from the old underlying contract, and thereafter the principal amount will not fluctuate throughout the term of the instrument as a result of the price of a linked commodity. In the case of ComPS related to a basket of commodities, the affected contract within the index basket will be removed from the basket. Unlike ComPS on individual commodities, the index value of ComPS related to baskets will not be fixed and determined early. Rather, the index will continue to be calculated using the above described index calculation methodology by excluding the removed commodity, and using the new weights determined by J.P. Morgan under the advice of the JPMCI Policy Committee.

The new weights will adjust only for the removed commodity, taking its old arithmetic percentage weight in the index and dividing it up among one or more of its same sector index group members (i.e., energy, precious metal, base metal or agricultural). Thus, for example, the removal of an energy related commodity will not change the energy related weighting in the JPMCI basket, but it will change the individual weightings of some or all of the remaining energy components within the energy subindex. For example, if natural gas were removed from the JPMCI, its 7% weight in the basket would be divided among the three remaining energy commodities as determined by J.P. Morgan with the advice of the JPMCI Policy Committee and the energy subindex would remain at 55% of the basket. The removal of a commodity will not change the value of the index; it only will change the weights of the contracts in the index which, going forward, will be used to determine future changes in the value of the index.

Members of the JPMCI Policy Committee will be prohibited from trading ComPS and from communicating any knowledge concerning changes in the underlying commodities.

c. *Surveillance.* The Amex is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on the LME pursuant to its information sharing arrangements with the Securities and Futures Authority ("SFA") through the Intermarket Surveillance Group ("ISG"). The Exchange also is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on NYMEX or COMEX pursuant to its information sharing agreement with NYMEX. In addition, the Exchange is able to obtain market surveillance information, including customer identity information, regarding transactions on the CBOT through the ISG.<sup>12</sup>

d. *Calculation of Value of Underlying Instruments.* The JPMCI:E, JPMCI:B, JPMCI:P and agricultural index (collectively the "sector indices") are calculated using the same methodology as the JPMCI or JPMCI:X which the

Commission previously approved.<sup>13</sup> The sector indexes are dollar weighted, arithmetic averages measuring the return from an investment in the applicable futures contracts. The value of each sector index is defined by a trading strategy that holds a futures position in each of the commodities for a one month period and then rebalances the value of the commodities held for the following month based on a constant dollar weighting scheme. The rebalancing generally occurs at the end of the trading on the 4th business day of every month on which the relevant exchanges are open. The new contract used to rebalance is the nearest designated futures contract which has termination of trading or first notice day at least 10 business days into the following month. In addition, due to the periodic expiration of the futures contracts used to compute the index value, it also is necessary to "roll" out of expiring contracts and into the new nearby contracts. To minimize possible pricing volatility arising from conducting the roll on a single business day, the substitution of the new contract for the old is accomplished over a five business day period in increments of 20%.

The futures contract to be used for monthly rebalancing and rolling of each commodity will be the nearest designated futures contract to be used in the index, with a termination of trading date or first notice day not earlier than ten business days into the following month. The futures contract used for rebalancing will be called the "new contracts" and the futures contract that the index refers to up to the rebalancing date will be called the "old contract." For energy futures the new and old contracts will be different. For precious metals, base metals and agricultural commodities, the new and old contracts may be the same contract because of the absence of a designated contract for every month. Where the new and old contracts are the same, rebalancing and rolling only involve and adjustment of the amount held of the old contract.

Rebalancing is calculated according to the following formulae on the rebalancing date: number of new units needed = current index value \* weight of the commodity in the index/current price of the new contract per unit; and number of contracts needed = number of new units needed/number of units per contract.

After rebalancing has occurred, the roll is executed. This is the process by which the old contracts are sold and the

<sup>11</sup> The O.E.C.D. (Organization of Economic Cooperation and Development) consists of the following countries: the U.S., Japan, Germany, France, Italy, U.K., Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

<sup>12</sup> The Exchange currently has information sharing arrangements that qualify as comprehensive information sharing agreements with the following futures markets and self-regulators: CBOT; Chicago Mercantile Exchange, London International Financial Futures and Options Exchange; Montreal Exchange; New York Futures Exchange; NYMEX; the SFA; and the Sydney Futures Exchange.

<sup>13</sup> See Amex Individual ComPS Order and NYSE Individual CFIPs Order, *supra* note 4.

new contracts are purchased. Twenty per cent of the roll volume is transacted on each of the five subsequent business days after the rebalance date.

The rebalancing and rolling process determines the new contract and the number of new contracts to be used in the daily index calculation for the coming month. (During the five day roll period, the theoretical portfolio may consist of a blend of the new and old contracts for each commodity.) The daily index value is calculated as the sum of the previous day's closing index value plus the gain, or minus the loss, of the theoretical portfolio on that day. For each component commodity, the gain for the day is calculated by multiplying the difference between the current day's price and the previous day's price times the number of these contracts held in the theoretical portfolio times the number of units of the commodity per contract.<sup>14</sup> The daily gain or loss on the theoretical portfolio then is simply the sum total of the gains and losses of the individual positions in the theoretical portfolio. The index value calculated in this manner for today then serves as the base to which tomorrow's gain or loss on the theoretical portfolio is added to determine the next day's index level. The foregoing describes an "excess return" methodology for calculating the index such as used in the JPMCI:X. If a total return index is used, a return based upon the U.S. Treasury Bill rate is incorporated into the index. The index calculation may be described as follows: Index (today) = Index (yesterday) + P&L on theoretical portfolio + Daily collateral interest where; Daily collateral interest = Index (yesterday) × Treasury Bill yield; and P&L on theoretical portfolio = Sum of individual P&L calculations for all commodities in theoretical portfolio. The P&L calculations are in the form of: P&L = [number of contracts × change in price of designated contracts].

*e. Dissemination of Value of Underlying Instruments.* During U.S. market hours, index values with respect to ComPS based upon corn, wheat and soybeans will be calculated every 60 seconds and distributed by Reuters and Bloomberg. Index values with respect to the JPMCI, JPMCI:X and the four sector indices also will be calculated every 60 seconds and distributed by an independent calculation agent. The last disseminated price from the applicable exchange will be incorporated into the index calculations. The Ending Index

Value for ComPS prior to the redemption date will be calculated by J.P. Morgan or an affiliate.

*f. Suitability.* Returns to investors in ComPS are unleveraged with neither a cap nor a floor. The Amex asserts that since commodity returns historically have been negatively correlated with financial assets, the ownership of ComPS (although their return is uncertain) will help to diversify a portfolio of financial instruments. There is an element of derivative pricing, however with respect to the calculation of the final payment. The Exchange, accordingly, will require members, member organizations and employees thereof to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer. In addition, members, member organizations or employees thereof recommending a transaction in ComPS would be required: (1) to determine that the transaction recommended is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. This is more than the duty to know and approve customers, but entails an obligation to make a determination that the transaction is suitable for the customer. The Exchange will distribute a circular to its membership prior to trading such securities providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in ComPS and highlighting the special risks and characteristics thereof. The Exchange will provide the Commission staff with a copy of the circular prior to distribution.

ComPS will be subject to the quality margin and trading rules of the Exchange, except when ComPS are issued as debt in denominations with a face value of \$1,000 or more, they will be traded subject to the Exchange's debt trading rules (although they will still remain subject to the Exchange's equity margin rules).<sup>15</sup>

## 2. Statutory Basis

The Exchange asserts that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and

equitable principles of trade, remove the impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, 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*

Written comments on the proposed rule change were neither solicited nor received.

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

This proposed rule change has been filed by the Exchange as a "noncontroversial" rule change pursuant to paragraph (e)(6) of Rule 19b-4. Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if the change (1) does not significantly affect the protection of investors or the public interest and (2) does not impose any significant burden on competition, pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and subparagraph (e)(6) of Rule 19b-4 thereunder.

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. 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) does not become operative for 30 days from November 25, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

<sup>14</sup> This last step is a result of the convention that contract prices are quoted on a per unit basis rather than a per contract basis.

<sup>15</sup> Amex Call, *supra* note 6.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Exchange. All submissions should refer to File No. SR-Amex-97-46 and should be submitted by January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39407; File No. SR-AMEX-97-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Listing and Trading Options on the Pauzé Tombstone Common Stock Index<sup>SM</sup>

December 5, 1997.

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 October 8, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 14, 1997 the Exchange submitted an amendment to the proposal.<sup>3</sup> The

Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons.

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

The Exchange proposes to trade options on the Pauzé Tombstone Common Stock Index<sup>SM</sup> (the "Index"), a new index developed by Pauzé Swanson Capital Management Co.<sup>TM</sup> comprising death care industry stocks. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock Index<sup>SM</sup> in the disclaimer provisions of the rule.

#### 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 self-regulatory organization 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 self-regulatory organization 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

The purpose of the proposed rule change is to permit the Exchange to trade standardized options on the Index. The Index is composed of the stocks of ten companies involved in providing death care services or products consisting of funeral services, cemetery services, and funeral and cemetery support goods and services. Options on the Index will provide investors with a low-cost means to participate in the performance of the death care industry and to hedge against the risk of investing in the industry. The Index also

Amendment No. 1, the Exchange added Rock of Ages Corp. to the Index. The Exchange also amended Exchange Rule 904C to set the position limit for the Index at 6,000 contracts on the same side of the market. In addition, the Exchange represents that component securities that in the aggregate account for no more than 10% of the weight of the Index will have an average monthly trading volume of at least 100,000 shares. The Exchange represents that it will maintain the Index so that at least 90% of the Index's numerical value and at least 70% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915. Finally, Amendment No. 1 makes a non-substantive change to clarify the proposal.

currently serves as the basis for an index mutual fund being offered by Pauzé Swanson Capital Management Co.<sup>TM</sup>, which has been registered with the Commission as an investment advisor since 1993. Pauzé Swanson's president, Philip C. Pauzé, has specialized in providing investment management for the assets of pre-need funeral accounts and cemetery endowment care funds since 1985, and is financial consultant to several state- and nation-wide funeral trusts and funeral directors associations' retirement plans.

The value to the public offered by options trading on the Index is underscored by the expected long-term growth of the death care industry, which offers essential, basic services required by the public regardless of economic conditions. Studies conducted by the Bureau of the Census of the United States Department of Commerce indicate that the aging of the population, as the "Baby Boom" generation begins to reach the age of mortality, as well as the population increase of approximately 28% from the years 1995 to 2025 will lead to a significant rise in the annual aggregate number of deaths. Consolidator companies, which purchase private funeral homes and consolidate their operations, currently constitute only about 15% of the total United States funeral service market, although the trend is toward consolidation. Consequently, these companies have a very large potential for future growth through acquisitions.

**Eligibility Standards for Index Components.** Pauzé Swanson Capital Management Co.<sup>TM</sup>, as developer of the Index, is responsible for selecting and maintaining the list of companies to be included in the Index. Only stocks of companies which derive at least fifteen percent of their revenues from the provision of goods and/or services to the death care sector of the economy are eligible to be included. The Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standards: (1) Each component has a market capitalization of at least \$100 million; (2) the total market capitalization of the Index is greater than \$17 billion; (3) more than 95% of the weight of the Index is accounted for by securities each having an average monthly trading volume of greater than 1,000,000 shares over the six months preceding the date of this filing; (3) foreign country securities or American Depositary Receipts thereon are not currently represented in the Index; (4)

<sup>17</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> See letter from Claire McGrath, Vice President and Special Counsel, Amex to Michael Walinskas, Senior Special Counsel, Commission dated November 13, 1997 ("Amendment No. 1"). In