

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.¹⁷

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 IndexSM

December 5, 1997.

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 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.³ 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 IndexSM (the "Index"), a new index developed by Pauzé Swanson Capital Management Co.TM comprising death care industry stocks. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock IndexSM 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.TM, 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.TM, 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)

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

all component stocks are either listed on the New York Stock Exchange ("NYSE"), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported National Market System securities; and (5) over 95% of the numerical value of the Index is accounted for by securities that meet the current criteria for standardized options trading set forth in Exchange Rule 915.

While the shares of Service Corp. International constitute 55.63% of the overall Index value, the Exchange believes that the price of Service Corp. Stock is not readily susceptible to manipulation because the company enjoys a sizable market capitalization of more than 8.04 billion dollars, has over 251 million shares outstanding, and has experienced an average monthly trading volume of over 13 million shares in the six months preceding the date of this filing. Furthermore, its contribution to the value of the Index will diminish as the stocks of more companies are added. The Exchange anticipates that several more companies will qualify for addition to the Index within the next few months. No other component security in the Index currently accounts for more than 15.59% of its value.

The Exchange believes the potential for manipulation of the Index is minimized and, in particular, the lesser-traded component stocks should properly be included in the Index for the following reasons: (1) The representation of these stocks in relation to the overall Index value (an aggregate of 4.76% of the weight of the Index) is small; and (2) over 95% of the value of the Index is accounted for by stocks which comply with the listing criteria for standardized options trading set forth in Rule 915 and have an average market capitalization of 3.12 billion dollars, an average of 91 million shares outstanding, and a six-month average monthly trading volume of 5.14 million shares.

Index Maintenance. The Index will be maintained by the Amex. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions.

The Exchange will maintain the Index so that: (1) The Index is comprised of no less than 9 component securities; (2) each of the component securities constituting the top 90% of the Index by weight, will have a minimum market

capitalization of \$75 million and each of the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of \$50 million; (3) 90% of the Index's numerical index value and at least 70% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component securities will either be listed on Amex, the New York Stock Exchange, or Nasdaq/NMS listed; and (6) 90% of the component securities shall have a monthly trading volume of at least 500,000 shares and the component securities constituting the bottom 10% of the Index, by weight, shall have a minimum average monthly trading volume of at least 100,000 shares.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Index Calculation. The Index will be calculated by the Amex using a modified market capitalization methodology. The value of the Index is determined by multiplying the price of each stock times the number of its shares outstanding times the percentage of the company's revenues derived from the death care industry, adding those products and dividing by a divisor. Currently, in the case of Hillenbrand Industries and American Annuity Group, only 40% and 15%, respectively, of their total market capitalization are valued in the Index since those proportions of the companies' revenues are derived from business in the death care industry. The divisor was initially determined to yield a benchmark Index value of 100 at the close of trading on its base date of December 31, 1985.⁴

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement. The proposed options on the Index will be European style (i.e., exercises permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m.

to 4:02 p.m. New York Time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on the one-tenth ($\frac{1}{10}$ th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (i.e., within ten points above or below the current Index value) option series on the Index at $2\frac{1}{2}$ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange has set a position limit of 6,000 contracts on the same side of the market with respect to options on this

⁴ The Index's value at the close of trading on August 19, 1997 was 523.04.

Index.⁵ Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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-97-33 and should be submitted by January 22, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39403; File No. SR-CHX-97-20]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Defining the Scope and Application of the Guarantee Available Under the Exchange's Guaranteed Execution System

December 4, 1997.

I. Introduction

On September 12, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to clarify the scope and application of the guarantee available under the Exchange's Guaranteed Execution System ("BEST System").

The proposed rule change was published for comment in Securities Exchange Act Release No. 39249 (Oct. 16, 1997), 62 FR 55443 (Oct. 24, 1997). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The provision currently governing the BEST System, Exchange Rule 37(a) of Article XX, states that, subject to certain exceptions, specialists must accept and guarantee execution of all agency orders³ and fill such orders on the basis

of the Intermarket Trading System ("ITS") Best Bid or Best Offer ("BBO")⁴ for Dual Trading System issues and the NBBO⁵ for Nasdaq/NM issues. The proposed rule change would amend Exchange Rule 37(a) to eliminate any ambiguity concerning the scope and application of the guarantee available under the BEST System and would make it clear that the guarantee is limited to both the size and price associated with the ITS BBO or NBBO.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b).⁶ In particular, the commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed 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.

Each bid and offer, including the ITS BBO and NBBO, contains two components—price and size. Because the Exchange's BEST Rule requires a specialist to accept and guarantee the execution of an agency market order on the basis of the ITS BBO or NBBO, the Exchange has consistently interpreted this guarantee as applying to both the size and price associated with that best bid or offer. However, the current text of the BEST Rule does not explicitly state that the guarantee is qualified in such a manner. To eliminate any uncertainty concerning the breadth of the guarantee, the proposed rule change adds the words "size and price associated with" to the BEST Rule to clarify that the guarantee available under the BEST System is limited to both the size and price associated with the ITS BBO or NBBO.

The proposed rule change is consistent with the automatic execution parameters employed by the Exchange's Midwest Automated Execution System ("MAX").⁷ Automatic execution of a

⁴ The ITS BBO is the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, and Philadelphia Stock Exchanges or the Intermarket Trading System/Computer Assisted Execution System, as appropriate.

⁵ The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1-1.

⁶ 15 U.S.C. § 78f(b).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of Exchange Rule 37, "agency order" means an order for the account of a customer but does not include professional orders.

⁷ The MAX System provides an automated delivery and execution facility for orders that are

Continued

⁵ See Amendment No. 1, *supra* note 3.

⁶ 15 U.S.C. § 78f(b).