

notes that the Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Amex. In view of the importance of maintaining the confidentiality of this information, the SEC believes that the officers and/or directors overseeing the exchange employees conducting the relevant market surveillance and enforcement proceedings would be responsible for ensuring the confidentiality of the information provided by the SEC pursuant to the MOU with the CONSOB and should take reasonable measures to ensure that the information does not become available to unauthorized persons. Thus, the Commission believes that the Exchange will undertake to maintain the confidentiality of such information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

The Commission believes that the Amex, by adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, will be in a position to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange's proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market. Accordingly, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-AMEX-96-36) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>8</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97-4604 Filed 2-24-97; 8:45 am]

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[Release No. 34-38308; File No. SR-Amex-96-44]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on Exchange-Traded Fund Shares

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1996, the American Stock Exchange, Inc. ("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 Amex. On January 16, 1997, the Exchange filed Amendment No. 1 to the proposal.<sup>1</sup> On February 19, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons.

<sup>1</sup> In Amendment No. 1, the Exchange states: (1) that the proposal is limited to the listing and trading of options on those exchange-traded fund shares that have received approval from the Commission; and (2) the Exchange will list and trade options on exchange-traded funds shares that hold foreign country securities only if: (i) the Exchange has a market information sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision ("OMS", Division of Market Regulation ("Division"), Commission, dated January 15, 1997. ("Amendment No. 1").

<sup>2</sup> Amendment No. 2 supersedes and replaces Amendment No. 1 to the extent that it modifies proposed Commentary .06(4) to state that the Amex will list and trade options on exchange-traded fund shares that hold foreign country securities only if: (i) the exchange has an effective surveillance sharing agreement with the primary exchange for each of the securities held by the fund, or (ii) the fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940 and the securities held in the fund are issued by issuers based in five or more countries. The Exchange defines an "effective surveillance sharing agreement" as an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the customers transacting in those securities. See letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated February 18, 1997 ("Amendment No. 2").

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

The Amex proposes the adoption of rules to permit the trading of options on securities representing interests in open-end, exchange-listed investment companies that hold securities constituting or based on an index or a portfolio of securities.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

#### 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 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

The purpose of the proposed rule change is to provide for the trading of options on exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities (referred to hereinafter as "Exchange-Traded Fund Shares" or "Fund Shares").<sup>3</sup>

As noted above, a characteristic of all Exchange-Traded Fund Shares is that they are open-ended, and new shares may be created on any business day at a cost related to the net asset value in a transaction with the fund itself. The ability of the seller of a call on any of these Fund Shares to deliver upon exercise will thus be a function of the

<sup>3</sup> Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts<sup>SM</sup> ("PDRs") based on the Standard & Poor's 500<sup>®</sup> Composite Stock Price Index and the Standard & Poor's MidCap 400 Index<sup>TM</sup>. In addition, the Exchange trades Index Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares<sup>SM</sup> ("WEBS") based on seventeen foreign equity market indexes. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, et seq. and Rule 1000A et seq., respectively, and trade like shares of common stock.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

availability of shares from the fund itself (which is itself a function of the creation mechanism and the shares underlying the index or portfolio) and not of the bid/ask spread, trading volume, or the portfolio size of the fund. Exchange-Traded Fund Shares are also redeemable on any business day, at a price related to the net asset value. Consequently, the ability to liquidate shares received on the exercise of a put will be a function of the ability to redeem the shares from the fund (which is itself a function of the creation mechanism and the shares underlying the index or portfolio), not the bid/ask spread, trading volume, or the portfolio size of the fund.

Options on Exchange-Traded Fund Shares are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply generally to trading in options on equity securities or indexes of equity securities. However, the Exchange proposes some different listing criteria for options on Exchange-Traded Fund Shares and intends to have each option contract cover 1000 Exchange-Traded Fund Shares. Also, reflecting the open-ended nature of the Fund Shares, the Exchange is not proposing any position or exercise limits to apply to options on Exchange-Traded Fund Shares.

The listing standards proposed for options on Exchange-Traded Fund Shares are set forth in proposed Commentary .06 under Exchange Rule 915 and in proposed Commentary .08 under Exchange Rule 916. These standards, which provide for the listing of European-style options only, are substantially the same as those that apply to the initial and continued listing of the Fund Shares pursuant to Exchange Rules 1002 and 1002A. Conforming the listing standards for options on Exchange-Traded Fund Shares to the listing standards that apply to Fund Shares themselves will assure that whenever there is trading in the underlying Fund Shares, options on these same Fund Shares will also be available. The Exchange believes that the contemporaneous availability of both options and Fund Shares is particularly necessary for Fund Shares on indexes or portfolios of securities when there already exist Fund Shares based on the same or a similar index or portfolio of securities. It is expected that Fund Shares with underlying options will be more useful to investors seeking to modify their risk in such Fund Shares, the underlying indices, markets or market segments. Demand for and creation of Fund Shares with underlying options is likely to exceed demand for and creation of Fund Shares without underlying options on the same or a

similar index or portfolio of securities. Correspondingly, a new fund without options will have a difficult time competing with an established fund with underlying options. A new fund based on a Japanese index, for example, would encounter major obstacles in achieving a reasonable size when in competition with an established fund that has underlying options if the new fund does not have options. The Exchange's proposed listing standards provide that if a particular series of Exchange-Traded Fund Shares should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the Fund Shares, and all such options will trade on a liquidation-only basis.

The Amex believes the availability of these options will be beneficial to investors, since options will permit investors to adjust the risks and rewards of investing in the unit investment trust or fund to their individual needs. Options also will add depth and liquidity to the market for Exchange-Traded Fund Shares by permitting market makers in that market to hedge the risks of their market-making activities efficiently. Options traders and market makers, in turn, will obtain liquidity from the market in Fund Shares and the market in the underlying securities represented in the portfolio.

Reflecting the open-ended nature of Exchange-Traded Fund Shares, maintenance or continued listing standards for these Fund Shares do not include criteria based on either the number of Fund Shares outstanding or trading volume.<sup>4</sup> Similarly, the Exchange believes it is neither necessary nor appropriate to apply traditional position or exercise limits to Fund Share options, and it is proposing to amend Rules 904 and 905 to provide that these limits shall not ordinarily apply. Since it should always be possible to create more Fund Shares at a cost related to their net asset value by tendering a specified in-kind deposit of the securities that constitute the underlying index or portfolio and/or cash, there is no meaningful limit on the available supply underlying Fund Shares. The diversification inherent in

<sup>4</sup> As set forth in Rules 1002 and 1002A, the Exchange establishes a minimum number of units to be outstanding before trading in a series of Exchange-Traded Fund Shares may commence. Although there is no comparable maintenance standard, as a practical matter there can never be trading in a series of Fund Shares in which there is less than one Creation Unit outstanding, since Fund Shares may only be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and options on that series) will cease to trade.

the satisfaction of regulated investment company requirements for pass-through tax treatment of dividends and other income insures that the market value of the shares underlying any fund will be very large. Accordingly, the Exchange believes there is no need for option position and exercise limits to protect the underlying market against squeezes and other attempts at manipulation, or inadvertent market disruption stemming from temporary supply and demands imbalances. The Amex believes the proposed Exchange-Traded Fund Shares options' European-style exercise (which gives the option seller ample advance knowledge of the time and size of any possible exercise transaction), physical settlement of the option, Creation Unit size share and/or cash deposits, and a substantial underlying market in the securities held by the Fund, combine to insure against successful attempts at manipulation or material market disruptions stemming from trading activity in the Fund Shares, multiple Creation Unit sized baskets of portfolio securities, or options on Fund Shares. Furthermore, in the absence of any maintenance or continued listing requirements in the underlying market that call for a minimum number of outstanding Exchange-Traded Fund Shares or for minimum trading volume, the Exchange believes that position and exercise limits would not be meaningful or useful as a percentage of any of these measures. For these reasons, and to assure that as long as there is trading in the underlying Fund Shares there can also be trading in the related options, the Exchange is not proposing any position or exercise limits for Fund Shares options. The Exchange reserves the right, however, to impose position and exercise limits if, for reasons not now conceivable, such limits should ever be needed in the interest of fair and orderly markets in the options, the underlying Fund Shares, or the portfolio securities underlying the Fund Shares.

Reflecting that the underlying portfolios of Exchange-Traded Fund Shares are diversified and generally less volatile than a typical component of the portfolios, it is also proposed that each option contract cover 1000 Exchange-Traded Fund Shares and that the minimum strike price intervals for options on Exchange-Traded Fund Shares will be \$2.50 where the strike price is \$200 or less, and \$5.00 where the strike price is over \$200. These are comparable to the strike price intervals applicable to index options having strike prices at about the level expected for Fund Share options.

The proposed margin requirements for options on Exchange-Traded Fund

Shares are at the same levels that apply to options generally under Exchange Rule 462, except, reflecting the diversified nature of the underlying portfolios represented by the Fund Shares, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on Exchange-Traded Fund Shares are comparable to margin requirements that currently apply to broad-based index options under Exchange Rule 462.

The Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of Fund options, and it has been advised that the Options Price Reporting Authority ("OPRA") also will have the capacity to support these additional series now that it has implemented an additional outgoing high speed line from the OPRA processor.<sup>5</sup>

## 2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Amex 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 solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of 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 such 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 filled 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-96-44 and should be submitted by March 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-38307; File No. SR-Amex-97-04]

## **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the de Jager Year 2000 Index**

February 19, 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 January 27, 1997, the American Stock Exchange, Inc., ("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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade options on The de Jager Year 2000 Index ("Index"), a new stock index developed by the Amex and de Jager & Company based on stocks (or American Depositary Receipts ("ADRs") thereon) of companies whose business is expected to benefit from the need of companies, governments, and others to address and resolve the "Year 2000" problem. In addition, the Amex proposes to amend Exchange Rule 901C, Commentary .01 to reflect that 90 percent of the Index's numerical index value will be accounted for by stocks which meet the current criteria and guidelines set forth in Exchange Rule 915.

### **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 Amex and de Jager & Company have developed a new index called The de Jager Year 2000 Index, based entirely on shares of widely-held companies whose business is expected to benefit from the need of companies, governments, and others to address and resolve the "Year 2000" problem.<sup>3</sup> The

<sup>3</sup> The components securities in the Index include: American Management System; Analysts International Corp.; Ciber Inc.; Computer Associates International Inc.; Computer Horizons Corp.; Computer Sciences Corp.; Compuware Corp.; Data Dimensions Inc.; Dun & Bradstreet Corp; Electronic

<sup>5</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated November 8, 1996.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

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