

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40008; File No. SR-Amex-98-17]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing and Trading of Warrants on the PaineWebber Oil & Gas Producers Index

May 19, 1998.

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 April 29, 1998, the American Stock Exchange, Incorporated ("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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to list and trade warrants on the PaineWebber Oil & Gas Producers Index ("Index"), a narrow-based index developed by PaineWebber Incorporated currently comprised of stocks of 22 companies in the oil and gas industry. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.³

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 represented that no comments were 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Amex to list and trade warrants on the Index. The Amex states that warrants on the Index are designed to provide investors with an investment vehicle to participate in or hedge against volatility associated with the ownership of stocks of companies in the oil and gas industry and decrease the risk involved in selecting individual stocks in this industry. The Amex filed this proposal pursuant to Section 19(b)(3)(A) of the Act, and Section 106⁴ of the Amex *Company Guide* and Amex Rule 901C, Commentary .02, which together provide for the commencement of the trading of warrants on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Section 106 of the Amex *Company Guide*, Amex Rule 901C, Commentary .02 and the Commission's order approving Exchange Rule 910C.⁵

Criteria Under Section 106 of the Amex Company Guide. Warrant issues on the Index will conform to the listing guidelines under Section 106 of the Amex *Company Guide*, which provide, among other things, that (1) the issuer shall have tangible net worth in excess of \$250,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(A) of the *Company Guide* or meet the alternate guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and

have an aggregate market value of \$4,000,000.

Criteria Under Exchange Rule 901C For Index Components. Pursuant to Commentary .02 to Exchange Rule 901C, (1) each of the component securities has a minimum market capitalization of at least \$75 million and has a trading volume in each of the last six months of not less than 1,000,000 shares; (2) the lesser of the five highest weighted component securities in the Index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months; (3) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all of the component securities in the Index currently underlie standardized options); (4) the Index contains no American Depositary Receipts ("ADRs"); (5) all component stocks are listed on the Amex, the New York Stock Exchange ("NYSE"), or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported National Market System securities ("Nasdaq/NMS"); and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Design. The Index was designed by PaineWebber and will be maintained by the Amex. The Amex represents that the Index is a narrow-based index currently comprised of stocks of 22 companies from the oil and gas industry. The total capitalization of the component securities in the Index as of April 21, 1998 was approximately \$57 billion. The average capitalization on that date was approximately \$2.6 billion. The individual market capitalization of the component securities ranges from \$324 million to \$9.9 billion. The components in the Index had a six month average daily trading volume of 7 million shares per day and ranged from 1.6 million shares per day to 13.2 million shares per day.

Index Calculation. The Index is market capitalization-weighted such that the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

³ The text of the proposed rule change contains a list of the component securities including the individual component security weights and average daily trading value and market capitalization for each security.

⁴ Section 106(j) of the Amex *Company Guide* provides that in order to list warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act, the Exchange may file for approval of a stock index industry group underlying a proposed warrant pursuant to the procedures and criteria set forth in Commentary .02 to Exchange Rule 901C. (See also Securities Exchange Act Release No. 34-37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).)

⁵ See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994). Accordingly, the Exchange has represented that the proposed rule 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.

and dividing by the current index divisor.

Maintenance of the Index. 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 in accordance with Amex Rule 901C, Commentary .02 so that, (1) the Index is comprised of not less than 15 underlying stocks, and not more than 29 underlying stocks; (2) component stocks constituting the top 90% of the Index, by weight, will have a minimum market capitalization of \$75 million, and the component stocks constituting the bottom 10% of the Index, by weight, may have minimum market capitalization of \$50 million; (3) 90% of the Index's numerical index value and at least 80% of the total number of components will meet the then current criteria for standardized options 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 stocks will either be listed on the Amex, the NYSE, or Nasdaq/NMS; (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in the aggregate account for more than 60% of the Index; (7) trading volume of each component security shall be at least 500,000 shares for each of the last six months, or for each of the lowest weighted components that in aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last six months; and (8) the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index shall have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

Dissemination of the Index Value. Similar to other stock index values which underlie exchange-traded products, the value of the index will be calculated continuously and disseminated every 15 seconds over the

Consolidated Tape Association's Network B.

Warrant Expiration and Settlement. Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level. If "out-of-the-money" at the time of expiration, the warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

Other Exchange Rules Applicable to Index Warrants. The listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. These rules cover issues such as exercise and position limits and reporting requirements. Surveillance procedures currently used to monitor trading in each of the Exchange's other index warrants will also be used to monitor trading in warrants on the PaineWebber Oil & Gas Producers Index. The Index is deemed to be a Stock Index Industry Group under Rule 900C(b)(1). The Exchange expects that the review required by Rule 1107(b)(ii) will result in a position limit of 6,750,000 warrants.

2. Basis

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 designated 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act. The Amex may not list warrants for trading on the Index prior to 30 days after the date the proposed rule change was filed with the Commission.⁶ At any time within 60 days of the filing of such proposed rule change, the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 in Washington, DC. 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 number SR-Amex-98-17 and should be submitted by June 12, 1998.

⁶ See Securities Exchange Act Release No. 34-34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40019; File No. SR-Amex-97-40]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Proposed Revisions to the Exchange's Policy Regarding the Use of Wireless Data Communications Devices

May 21, 1998.

I. Introduction

On October 29, 1997, the American Stock Exchange, Inc. ("Amex" 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 amend its policy regarding the use of wireless data communications devices on the trading floor.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39411 (December 8, 1997), 62 FR 65727 (December 15, 1997). No comments were received on the proposal. The Exchange subsequently filed Amendment No. 1 on March 17, 1998.³ The order approves the proposed rule filing, as amended.

II. Description

The Exchange has undertaken to build an infrastructure ("Infrastructure") to

support wireless data communications on the trading floor by members and Exchange staff. On September 26, 1996, the Commission approved various rule changes and a policy regarding the use of wireless data communications devices on the trading floor (the "Wireless Communications Policy" or "Policy").⁴ The Wireless Communications Policy was originally based upon a design for the Infrastructure that called for all wireless data transmissions to pass through an application residing between the member firms and the Exchange's wireless infrastructure (the "Gateway"). The Gateway would have monitored data that was being transmitted to and from the Infrastructure and would have repackaged it to conform to a standard format for all members to use. The Gateway would have permitted the Exchange to make a record of all wireless communications and to unilaterally "throttle" all, or selected, member communications in the event that such transmissions used a disproportionate amount of the available radio frequency or threatened to exceed available radio frequency capacity. The Exchange is now proposing to eliminate the Gateway.

As noted above, the Gateway would have maintained a record of all wireless communications. The Exchange states that the records obtained through the Gateway would have been duplicative of records already maintained by member firms pursuant to Commission and Exchange rules and that the proposed rule change will eliminate this duplicative data base. Under the revised Wireless Communications Policy, members will still be required to maintain books and records pursuant to Exchange rules and policies and federal securities laws. According to the Exchange, the relevant Exchange rules require members to prepare and maintain records of orders and transactions containing the information specified in Exchange Rule 111, Commentary .04; Exchange Rule 114, Commentary .09; and Exchange Rules 153, 180, 181, and Exchange Rule 950(a), (c) and (d), Commentary .03. The Exchange's audit trail policies also require members to record the time of trade, executing broker badge number and contra broker badge number with respect to all trades. In addition, the Exchange states that Rules 17a-3(a) (6) and (7) under the Act require registered brokers and dealers to prepare records of brokerage orders and dealer

transactions meeting the requirements of these rules, and that these records must be maintained for the period stated in Rule 17a-4(b)(1) under the Act.⁵

In addition, the Exchange states that the elimination of the record keeping capabilities of the Gateway will not cause any diminution of the Exchange's surveillance capabilities because the Exchange will retain the same access to member books and records that it currently possesses. The Exchange currently has the ability to obtain records from its members for investigative purposes pursuant to its authority to require members to produce their books and records and to discipline members (and their employees) that fail to comply with such requests.⁶ In the absence of a Gateway, the Exchange would continue to employ its current procedures for obtaining information from its members and their employees.⁷

With respect to monitoring radio frequency capacity and usage, the revised Wireless Communications Policy will state that the Exchange's staff may request members to reduce radio traffic if and when required because a particular user is using more than its fair share to radio frequency capacity of overall usage is reaching its maximum. Members will be obligated to comply immediately with any such request and their ability to send wireless communications may be immediately terminated for failure to comply.

The Exchange also proposes some further changes to the Wireless Communications Policy to include a requirement that members using wireless technology maintain a record of orders and quotes initiated on the Floor and transmitted to other markets, a statement that members do not acquire a property interest in their assigned band width, a requirement that affiliates be treated as a single entity for purposes of band width assignment and a reduction in the number of handheld terminals that the system is able to support in view of anticipated demand for this capacity.

III. Discussion

The Commission finds that the proposed rule change is consistent with

⁵ The Commission notes that in general members, brokers, and dealers are subject to the Commission's recordkeeping and record retention rules, Rule 17a-3, and 17a-4 under the Act (17 CFR 240.17a-3 and 240.17a-4).

⁶ See, e.g., Article II, Section 3(a) of the Exchange Constitution, Article V, Section 4(k) of the Exchange Constitution, and Exchange Rule 31.

⁷ The Exchange also states that to the best of its knowledge, the Exchange's current procedures for obtaining member books and records are consistent with existing practice at all other exchanges.

¹ 17 CFR 200.30-3(a)(12)(1994).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Heather Seidel, Attorney, Market Regulation, Commission, dated March 16, 1998 ("Amendment No. 1"). Amendment No. 1 explains in further detail why the Exchange is eliminating the Gateway; which records members are required to keep pursuant to Exchange and Commission rules that the Gateway would have separately maintained; how the Exchange will obtain records from its members for surveillance purposes without the Gateway; and how the Exchange will monitor overall radio frequency usage and individual firm usage in the absence of the Gateway in order to determine that the wireless infrastructure is approaching its capacity, and which firm(s) is using a disproportionate amount of the radio frequency capacity.

⁵ See Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996).