

person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with a Fund so long as fewer than twenty Creation Units of the Fund are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Funds to purchase and redeem Creation Units.

8. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of a Fund described above from purchasing or redeeming Creation Units. The composition of a Fund Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of a Fund to effect a transaction detrimental to the other holders of its Shares. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Fund.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new Fund of a Trust, whether identical or similar to the Funds, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless Applicants have requested and received with respect to such new Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28641 Filed 10-26-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40569; File No. SR-Amex-97-33]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 4 to the Proposed Rule Change Relating to Listing and Trading Options on the Pauzé Tombstone Common Stock IndexSM

October 19, 1998.

I. Introduction

On October 8, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 authorize Options on the Pauzé Tombstone Common Stock Index.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on December 12, 1997.³ No comments were received on the proposal. On May 29, August 19, and August 25, 1998, respectively, the Exchange submitted Amendment Nos. 2,⁴ 3,⁵ and 4⁶ to the proposed rule change. This order approves the proposal and grants accelerated approval to Amendment Nos. 2, 3, and 4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39407 (Dec. 5, 1997), 62 FR 65463.

⁴ See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division of Market Regulation ("Division"), SEC dated May 26, 1998 ("Amendment No. 2").

⁵ See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division, SEC dated August 18, 1998 ("Amendment No. 3").

⁶ See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division, SEC dated August 24, 1998 ("Amendment No. 4").

II. Description of the Proposal

A. General

Amex proposes to trade standardized options on the Pauzé Tombstone Common Stock Index ("Index"), a cash-settled narrow based index developed by Pauzé Swanson Capital Management Co.TM ("Pauzé"). The Index is composed of the stocks of ten companies involved in the death care services or products industry. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock Index in the disclaimer provisions of that rule.⁷

B. Composition of 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. The Index also currently serves as the basis for an index mutual fund being offered by Pauzé, which has been registered with the Commission as an investment adviser since 1993. Pauzé'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 Exchange will use a modified market capitalization methodology to calculate the value of the Index.⁸ The Index was initialized at a level of 100 at the close of trading on its base date of December 31, 1985.⁹

C. Eligibility Standards for Index Components

Pauzé, 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

⁷ Amex Rule 902 will be amended to add subsection (h) which will provide, among other things, that Pauzé Swanson Capital Management Co. does not guarantee the accuracy or completeness of the Index or any data included therein, nor does Pauzé Swanson Capital Management Co. make any warranty, either express or implied, as to the results to be obtained by any person or entity from the use of the Index or any data included therein.

⁸ See *infra* section II. D. entitled "Index Calculation" for a description of this calculation method.

⁹ The Index's value at the close of trading on August 19, 1997 was 523.04.

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; (4) foreign country securities or American Depositary Receipts thereon are not currently represented in the Index; (5) 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 (6) 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 915.¹⁰

While the shares of the Service Corp. International constitute 58.10% 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 10.89 billion dollars, has over 255 million shares outstanding, and has experienced an average monthly trading volume of almost 12 million shares in the six months preceding the date of this order. 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 13.55% of the value of the Index.

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.

D. 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.¹¹ adding those products and dividing by a divisor. Currently, in the case of Hillenbrand Industries and American Annuity Group, only 46% 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 Exchange represents that the percentage of a components' business that comes from the death care industry will be determined by David D. Jones, in consultation with the Exchange, using the components' financial statements filed with the Commission.¹² 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, 1985.¹³

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 and to the Options Price Reporting Authority ("OPRA")

E. Index Maintenance

The Index will be maintained by the Amex in consultation with David D. Jones.¹⁴ 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 NYSE, 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.

F. Expiration and Settlement

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.¹⁵

¹⁰ Initial eligibility criteria include: (1) the security must have a minimum of 7,000,000 shares held by persons other than those required to report their security holdings under Section 16(a) of the Act; (2) there must be at least 2,000 holders of the security; (3) the security must have a trading volume of at least 2,400,000 shares over the preceding twelve months; (4) the security must have had a share price of at least 7½ for the majority of business days for the last three calendar months preceding the date of selection, and (5) the issuer is in compliance with any applicable requirements of the Act.

¹¹ See Amendment No. 3, *supra* note 5.

¹² See Amendment No. 4, *supra* note 6. The Commission notes that David D. Jones and the Exchange reserve the right to consult additional information sources, such as independent commercial financial information vendors in making their determinations. *Id.*

¹³ The Index's value at the close of trading on August 91, 1997 was 523.04.

¹⁴ See Amendment No. 2, *supra* note 4.

¹⁵ The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an

G. Contract Specifications

The proposed options on the Index will be European style,¹⁶ 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). 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. Trading in expiring options will cease at the close of trading on the last trading day. 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.

H. Position and Exercise Limits, Margin Requirements and Trading Halts

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). 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, exercise limits, and trading halt procedures¹⁷ that are applicable to trading of narrow-based index options. 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 Index.

I. Listing of Long-Term Options on the Full or Reduced Value of the Index

The proposal provides that the Exchange may list longer term options series having up to thirty-six months to expiration on the full value of the Index. Instead of such long-term options on a full value level, the Exchange may list long-term, reduced value put and call options based on one-tenth ($\frac{1}{10}$) 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.

J. Surveillance

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. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.¹⁸

Pauzé will not be directly involved with the on-going maintenance of the Index. The Index will be maintained by the Exchange, in consultation with David D. Jones. Mr. Jones, a former employee of Pauzé was active in the development of the Index. Mr. Jones, who is not a broker-dealer, will be entering into a consulting arrangement with Pauzé to work with the Exchange to maintain the Index. Mr. Jones and Pauzé will adopt procedures to prevent non-public information relating to the Index from being discussed with anyone from Pauzé before such information has been made public through the distribution of an Information circular by the Exchange.¹⁹

¹⁸ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

¹⁹ See Amendment No. 2, *supra* note 4. In addition, Mr. Jones represents that he will not enter into any transactions in any securities that will be added or deleted from the Index or any related derivative securities until information regarding those component securities has been made publicly

III. Discussion

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,²⁰ and, in particular, with the requirements of Section 6(b)(5).²¹ Specifically, the Commission finds that the trading of options on the Index, including full-value and reduced value index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the death care industry.²²

The trading of options on the Index and reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Index as narrow-based for purposes of index options trading. The Index is comprised of a limited number of stocks intended to track discrete industry groups of the death care sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options

available. Finally, Mr. Jones has represented that he will not engage in transactions involving the Index, including transactions in options contracts overlying the Index and its individual components. See Letter from Scott G. Van Hatten, Legal Counsel, Derivatives Legal Department, Amex, to David Sieradzki, Attorney, Division, SEC dated August 18, 1998.

²⁰ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the death care sector in the U.S. stock markets.

underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. See Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR-OCC-95-19).

¹⁶ A European-style option can be exercised only during a specified period before the option expires.

¹⁷ Pursuant to Amex rule 918C, the trading of options on the Index will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index's value are halted or suspended.

to trading in the proposed Index options.²³

The Commission also believes that the liquid markets, large capitalizations, and relative weightings of the stocks comprising a majority of the weight of the Index significantly minimizes the potential for manipulation of the Index. First, stocks accounting for more than 90% of the weight of the index and actively traded. Average monthly trading volume in the aforementioned top weighted component stocks of the Index for the period between February 14, 1998 and July 14, 1998 ranged from 1.2 million to 11.96 million shares. Second, the market capitalizations of those stocks are large, ranging from \$10.89 billion to \$474 million. Third, the Index will be maintained so that in addition to the other maintenance criteria discussed above in Section II. E, at each rebalancing, at least 90% of the Index's numerical value and at least 70% of the total number of component securities will be composed of securities eligible for standardized options trading. Fourth, Pauzé and the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3-1 of the Act. Fifth, the Commission believes that it is appropriate for the Exchange to use a "modified market capitalization" methodology to maintain the Index. Use of this method will reduce the weight in the Index of securities that do not derive all of their revenues from the death care sector. The Commission observes, however, that reducing the weighting of such components will not cause the Index to better reflect the death care sector. Although, the weighting of those components with non-death care business will be reduced, the Index will continue to reflect the impact of the components' revenue from other lines of business unrelated to the death care sector. Finally, the Commission believes that Amex's existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks or the Index, will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index, can commence on a national securities exchange. The

Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the Index will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Index. Finally, the Amex has stated that it will distribute information circulars to members following rebalancing and prior to component changes to notify members of changes in the composition of the Index. The Commission believes this should help to protect investors and avoid investor confusion.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.²⁴ In this regard, markets on which the components of the Index currently trade and the markets on which all component stocks trade are members of the ISG, which provides for the exchange of all necessary surveillance information.²⁵

The Commission notes that Pauzé will not be directly involved with the ongoing maintenance of the Index. The Index will be maintained by Amex in conjunction with David D. Jones. Mr. Jones, participated in the development of the Index and is not a broker-dealer. The Exchange has represented that the consulting agreement between Pauzé and Mr. Jones will state that Mr. Jones will not divulge or discuss information regarding additions or deletions from the Index with anyone at Pauzé until after that information has become public through the distribution of an

Information Circular by the Exchange.²⁶ In addition, the Exchange represents that Mr. Jones agrees not to enter into any transactions in any securities (or related derivative securities) that will be added or deleted from the Index until after that information has become public through the distribution of an Information Circular by the Exchange.²⁷

D. Market Impact

The Commission believes that the listing and trading of options on the Index, including long-term full-value and reduced-value Index options, on the Amex will not adversely impact the underlying securities markets.²⁸ First, as noted above, most of the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Second, because the weighting of Service Corp. International is large, the Exchange has set a 6,000 contract position limit to minimize potential manipulation and market impact concerns. Third, the risk to investors of contraparty non-performance will be minimized because the options on the Index will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring options on the Index (including long-term full-value and reduced-value Index options) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.²⁹

The Commission finds good cause for approving Amendment Nos. 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of this

²⁶ See letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Deputy Associate Director, Division, SEC dated May 26, 1997.

²⁷ *Id.*

²⁸ In addition, the Amex and the OPRA have represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Index. See Letter from Edward Cook, Jr., Managing Director, Trading Floor Systems & Technology, Amex, to Michael Walinskas, Deputy Associate Director, Division, SEC, dated October 8, 1997; and letter from Joe Corrigan, Executive Director, OPRA, to Michael Walinskas, Deputy Associate Director, Division, SEC, dated January 13, 1998.

²⁹ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

²³ See *supra* Section II.H entitled "Position and Exercise Limits, Margin Requirements, and Trading Halts."

²⁴ See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

²⁵ See *supra* note 18.

amendment in the **Federal Register**. Amendment No. 2 clarifies the proposal to indicate who will be responsible for maintaining the index. In addition, Amendment No. 2 clarifies that David D. Jones will not divulge information relating to the maintenance of the Index before that information becomes public. Amendment No. 3 clarifies that the percentage of each component's market value represented in the Index is based on the percentage of a component's revenues derived from its activities in the death care sector of the economy. Finally, Amendment No. 4 clarifies that, to determine the percentage of a components' revenues that are derived from its activities in the death care industry, David D. Jones and the Exchange will look at the components' financial statements.

As a result, the Commission does not believe that Amendment Nos. 2, 3, or 4 raise any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and no comments were received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)³⁰ of the Act, to approve Amendment Nos. 2, 3, and 4 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2, 3, and 4, including whether they are consistent with the Act. 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 Amex. All submissions should refer to File No. SR-AMEX-97-33 and should be submitted by November 17, 1998.

³⁰ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-AMEX-97-33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28642 Filed 10-26-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40566; File No. SR-CBOE-98-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

October 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 23, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. 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 CBOE proposes to amend its fee schedule relating to the filing of annual financial statements by Exchange market-makers who are required to file annual financial statements pursuant to Rule 17a-5(d) under the Act.²

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE 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 CBOE 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 change the fee schedule for CBOE market-makers who must file with the Exchange annual financial statements pursuant to Rule 17a-5(d) under the Act and CBOE Rule 15.5. In 1991, the Exchange established a \$25 filing fee for this "FOCUS" report.³ The Exchange has discovered in the intervening years that a great deal of staff time must be devoted to reviewing and sometimes correcting the filings that are made with the Exchange. Consequently, to offset the cost of staff review of these filings, the Exchange has determined to raise the filing fee to \$100 for those CBOE market-makers who make their annual filing by hard copy. The Exchange has, however, recently provided members the opportunity to file their FOCUS reports electronically through the WinJammer system. Because the staff is able to review and process filings such quicker if they are submitted electronically, the Exchange is not proposing to change the fee for those market-makers who submit their annual financial statements electronically over the WinJammer system. The filing fee for electronic filers, therefore, will remain at \$25.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.17a-5(d).

³ Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180 (July 31, 1991).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).