

Dated: March 18, 1999.

Johathan G. Katz,
Secretary.

[FR Doc. 99-7062 Filed 3-18-99; 12:22 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41164; File No. SR-Amex-99-01]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Reductions in Airline, Natural Gas, Pharmaceutical and Securities Broker-Dealer Indices Values

March 12, 1999.

I. Introduction

On January 6, 1999, the American Stock Exchange LLC ("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 reduce the index values for the Airlines, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices.

The proposed rule change was published for comment in the **Federal Register** on February 9, 1999.³ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Commission granted the Exchange approval to list and trade options on the Airline Index on December 12, 1994,⁴ the Natural Gas Index on March 7, 1994,⁵ the Pharmaceutical Index on June 18, 1992,⁶ and the Securities Broker/Dealer Index on March 15, 1994.⁷ Initially, the aggregate value of the stocks contained in the Indices was reduced by divisors to establish index benchmark values of 200 in the Airline Index and Pharmaceutical Index and 300 in the Natural Gas Index and Securities Broker/Dealer Index. As of December

16, 1998, the index values were as follows: Airline Index—275, Pharmaceutical—742, Natural Gas Index—216, and Securities Broker/Dealer Index—464.⁸

In the case of the Airline, Pharmaceutical and Securities Broker/Dealer Indices, the Exchange believes that as a consequence of the rising values of the Indices, premium levels for options on the Indices have also risen. According to the Exchange, these higher premium levels have been cited as the principal factor that has discouraged retail investors and some market professionals from trading those index options. In addition, in the case of the Natural Gas Index the Exchange represents that its membership has indicated that indices with values between 100 and 200 tend to promote increased liquidity in the overlying options. As a result, the Exchange is proposing to decrease the Indices by one-half of their present values.

To decrease the values of the Indices, the Exchange will double the divisor used in calculating the Indices. The Amex proposes no other changes to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower value Indices will result in substantial lowering of the dollar values of options premiums for options contracts on the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split "ex-date," the number of outstanding options contracts on the Indices will be doubled and the associated strike prices halved.

Position and Exercise Limits

Currently, position and exercise limits for the Indices are as follows: Airline—15,000 contracts; Natural Gas—15,000 contracts; Pharmaceutical—12,000 contracts; and Securities Broker/Dealer—15,000. The Exchange proposes to double the position and exercise limits to 30,000, 30,000, 24,000, and 30,000 contracts respectively, on the same side of the market. This change

will be made simultaneously with the proposed reduction of the Indices' values and the doubling of the number of contracts.

Because the new position and exercise limits will be equivalent to the Indices' present limits, the Exchange believes there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the 12,000 or 15,000 contract limit will, as a result of the Index value reductions, automatically hold 24,000 or 30,000 contracts to correspond with the lowered Index values. These increased position and exercise limits will revert to the original limits at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.⁹

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, and in particular, with the requirements of Section 6(b).¹⁰ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)¹¹ requirements in that the proposed reduction in value of the Indices and the associated temporary increases in the position and exercise limits should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.¹²

By reducing the value of the Indices, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying the Indices. Similarly, the Commission believes that reducing the value of the Indices may attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that Amex's proposed adjustments to its position and exercise limits applicable to the Indices are appropriate and consistent with the Act. In particular, the Commission believes that the temporary doubling of the position and exercise limits is reasonable in light of the fact that the size of the options contracts on the Indices will be halved and that, as a result, the number of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41010 (February 1, 1999), 64 FR 6404 (February 9, 1999).

⁴ Securities Exchange Act Release No. 35084 (December 12, 1994), 59 FR 65419 (December 19, 1994).

⁵ Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

⁶ Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221 (June 24, 1992).

⁷ Securities Exchange Act Release No. 33766 (March 15, 1994), 59 FR 13518 (March 22, 1994).

⁸ On May 1, 1998, the Commission granted the Exchange approval to split the Airline Index in half. See Securities Exchange Act Release No. 39941 (May 1, 1998), 63 FR 25251 (May 7, 1998). On March 20, 1998, the Commission granted the Exchange approval to split the Securities Broker/Dealer Index in half. See Securities Exchange Act Release No. 39775 (March 20, 1998), 63 FR 14741 (March 26, 1998).

⁹ See note 13 *infra*.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 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).

outstanding options contracts an investor holds will be doubled. The temporary doubling of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of the Indices, their current level of investment in the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Index option contracts. As noted above, the increased position and exercise limits of 24,000 and 30,000 contracts will revert to their original limits of 12,000 and 15,000 contracts at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.¹³

The Commission further believes that doubling the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices' divisors will not have an adverse market impact on the trading in these options. After the split, the Indices will continue to be composed of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisors. The Commission notes that the Amex's surveillance procedures will also remain the same.

Finally, the Commission notes that, before implementing the proposed changes, the Exchange will provide reasonable advance notice of the proposed changes to the Indices to its membership.¹⁴ From experience, the Commission finds that reasonable notice may include the Exchange providing notice to its membership at least two weeks prior to the implementation of the proposed changes to the values of the Indices and the resulting adjustments to the outstanding options, issuing a second notice to its members just prior to implementing the Index reductions setting forth the new divisor and other relevant information, and issuing a circular to its members at least one month prior to the expiration of the furthest non-LEAP options on the Indices reminding its member firms that the respective position and exercise limits will revert to their original levels. Although not exclusive, the Commission believes that these proposed time frames should allow for

adequate notice to be provided to the holders of all open positions in options on the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices and other market participants.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-99-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-6917 Filed 3-19-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41170; File No. SR-MSRB-99-1]

March 15, 1999.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-38 on Consultants

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 March 4, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-99-1) as described in Items I, II, and III below, which Items have been prepared by the Board. The MSRB has designated this proposal as one constituting a stated policy, practice or interpretation with respect to the enforcement of an existing rule under Section 19(b)(3)³ of the Act which renders the proposal effective upon receipt of the filing by the Commission. 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 Board is filing herewith a notice of interpretation concerning Rule G-38 on consultants. The text of the proposed rule change is as follows in *italics*.

* * * * *

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR. 240.19b-4.

³ 15 U.S.C. 78s(b)(3).

Rule G-38 Question and Answer Agreement to Jointly Seek Underwriting Assignments

Q: Dealer Firm A and Dealer Firm B have entered into an agreement to jointly seek underwriting assignments. As part of this agreement, the two dealers have jointly submitted proposals to issuers. Dealer Firm A ultimately is selected to underwrite a negotiated sale of a primary offering of municipal securities (i.e., "municipal securities business" as defined in Rule G-37). Dealer Firm B will not act as an underwriter on this offering but will assist Dealer Firm A in structuring the transaction. Dealer Firm A will compensate Dealer Firm B for the work it provides on the transaction. Is Dealer Firm B a consultant to Dealer Firm A pursuant to Rule G-38, on consultants?

A. Yes. Dealer Firm B is a consultant to Dealer Firm A because, pursuant to the definition of consultant in Rule G-38(a)(i), Dealer Firm B is: (1) used by Dealer Firm A to obtain municipal securities business, (2) through direct or indirect communication with an issuer on behalf of Dealer Firm A, and (3) the communication is undertaken by Dealer Firm B in exchange for, or with the understanding of receiving, payment from Dealer Firm A. Moreover, Dealer Firm B is not exempt from the definition of consultant since it is not a municipal finance professional, and its sole basis of compensation is not the actual provision of legal, accounting or engineering advice, services or assistance. In addition, the Board believes that, even though Dealer Firm B is providing substantive work on the transaction, any dealer used by another dealer (other than a member of the syndicate) to assist in obtaining or retaining municipal securities business is acting as a consultant pursuant to Rule G-38.

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹³ According to the Amex, December 1999 will be the furthest expiration months for non-LEAPs on the Indices, for purposes of the reversion of position and exercise limits to their original levels. Per telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Marianne Duffy, Division of Market Regulation, SEC, on January 28, 1999.

¹⁴ *Id.* and telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Heather Traeger, Division of Market Regulation, SEC, on March 11, 1999.