

Dated:

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42489; File No. SR-AMEX-00-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Trading of Options on Biotech HOLDRs

March 2, 2000.

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 February 28, 2000, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6)³ under the Act. 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 trade standardized and FLEX equity options on Biotechnology Holding Company Depositary Receipts ("Biotech HOLDRs" or "HOLDRs"). The text of the proposed rule change is available at the Office of the Secretary, 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 Exchange 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 standardized equity options and FLEX⁴ equity options on Biotech HOLDRs.⁵ Biotech HOLDRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the HOLDRs. They are negotiable receipts issued by a trust representing securities of issues that have been deposited and are held on behalf of investors in HOLDRs. Biotech HOLDRs, which trade in round lots of 100, and multiples thereof, may be issued after their initial offering through a deposit of the required number of shares of common stock of the underlying issuers with the trustee. The trust will only issue HOLDRs upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 HOLDRs. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender HOLDRs in a round-lot and round lot multiples of 100 HOLDRs. Biotech HOLDRs are currently traded on the Exchange like other equity securities, subject to the Exchange's equity trading rules.

The Exchange believes trading options on Biotech HOLDRs is appropriate because Biotech HOLDRs currently exceed the minimum eligibility criteria for equities set forth in Amex Rule 915, as do each of the underlying securities.⁶ Specifically, there are a minimum of 7,000,000 shares of each of the underlying securities owned by persons other than those required to report their security holdings under Section 16(a) of the Act; there are a minimum of 2000 shareholders of each of the underlying securities; trading volume (in all markets in which the underlying

securities are traded) has been at least 2,400,000 shares in the preceding twelve months; the market price per share of each of the underlying securities has been at least \$7½ for the majority of business days during the three calendar months preceding the date of selection as measured by the lowest closing price reported in any market in which the underlying securities traded on each of the subject days and the issuers are in compliance with any applicable requirements of the Act. The Biotech HOLDRs also satisfy these eligibility criteria.

Options on Biotech HOLDRs will be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities. However, the Exchange is also proposing to list FLEX Equity options on Biotech HOLDRs. The Exchange will list option contracts covering 100 HOLDRs, the minimum required round lot trading size for HOLDRs. Strike prices for the contracts will be set to bracket the trust issued receipts at the same intervals that apply to standardized equity options (i.e., 2½ point intervals for underlying equity values up to \$25, 5 point intervals for underlying equity values greater than \$25 up to \$200, and 10 point intervals for underlying equity values greater than \$200). The proposed position and exercise limits for options on Biotech HOLDRs will be the same as those established for stock options as set forth in Amex Rule 904 and 905. The Amex anticipates that options on Biotech HOLDRs will initially qualify for a position limit of 13,500 contracts. However, as with standardized equity options, applicable position limits will be increased for options on Biotech HOLDRs if the volume of trading in HOLDRs increases to meet the requirements of a higher limit. As is currently the case for all FLEX Equity options, no position and exercise limits will be applicable to FLEX Equity options overlying the HOLDRs. Options on Biotech HOLDRs will be subject to the listing and maintenance standards set forth in Amex Rule 915 and 916.⁷ FLEX options will be subject to the

⁴ Flex equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

⁵ The Exchange's proposal to list and trade Trust Issued Receipts (also referred to as HOLDRs) was approved by the Commission on September 21, 1999. See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

⁶ The Exchange represents that both the Biotech HOLDRs and the underlying securities meet the options eligibility criteria outlined in Amex Rule 915. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, on February 28, 2000.

⁷ Amex has filed proposed listing and maintenance standards specifically for the trading of options on Trust Issued Receipts, proposed Commentary .07 under Amex Rule 915 and proposed Commentary .09 under Amex Rule 916. The proposed standards have not yet been noticed in the **Federal Register**, as the Commission and the Exchange are still discussing the proposed rule change. See SR-Amex-99-37. If the proposed standards are approved, Biotech HOLDRs will be subject to these specific listing and maintenance standards. Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 25, 2000.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

standards set forth in the Amex 900G rule series.⁸

Should Biotech HOLDERS 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 HOLDERS, and all such options will trade on a liquidation-only basis (*i.e.*, only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Amex will consider the suspension of opening transactions in any series of options of the class covering Biotech HOLDERS if: (1) The options fail to meet the uniform equity option maintenance standards in Commentary .01 to Amex Rule 916;⁹ (2) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Biotech HOLDERS for 30 or more consecutive trading days; (3) there are fewer than 50,000 HOLDERS issued and outstanding; (4) the market value of all Biotech HOLDERS issued and outstanding is less than \$1,000,000; or (5) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on Biotech HOLDERS will be physically-settled and will have the American-style exercise feature used on all standardized equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX Equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX Equity features.¹⁰ Lastly, the proposed margin requirements for options on Biotech HOLDERS will be at the same levels that apply to options generally under Amex Rule 462.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹¹ of the Act

in general and furthers the objectives of Section 6(b)(5)¹² in particular in that is designed 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 represents that the proposed rule change will impose no 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.¹⁵ Any any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection for investors, or otherwise in the furtherance of the purposes of the Act.¹⁶

The Exchange has requested that the rule change be accelerated to become operative immediately upon filing of the

proposal, because such proposal contemplates trading options on a product in which both the product and each of the underlying component securities exceeds the minimum eligibility requirements for trading options on equities as set forth in Amex Rule 915. Because both the securities underlying Biotech HOLDERS and Biotech HOLDERS themselves meet the eligibility requirements for trading options on equity securities, and because the Exchange is currently working to establish specific listing and maintenance standards for options on HOLDERS, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates March 2, 2000 as the operative date of this filing.

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, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX-00-13 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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⁸ Telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Heather Traeger, Attorney, Division, SEC, on February 28, 2000.

⁹ Specifically, Commentary .01 to Amex Rule 916 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (i) There are fewer than 6,300,000 publicly-held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below \$5 on a majority of the business days during the preceding 6 months.

¹⁰ An American-style option may be exercised at any time prior to its expiration. A European-style option, however, may be exercised only on its expiration date.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ Because the Commission and Amex have had ongoing discussions regarding the proposed rule change, the Commission has determined to waive the requirement that Amex provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

¹⁶ 15 U.S.C. 78s(b)(3)(C).

¹⁷ 17 CFR 200.30-3(a)(12).