

## XII. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

In witness thereof, this Plan has been executed as of the 20th day of February 2001 by each of the parties hereto.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44159; File No. SR-Amex-2001-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Revisions to the Exchange's Qualifying Examination

April 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 4, 2001, the American Stock Exchange LLC ("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.<sup>2</sup> 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 combine its two current membership examinations—equities and options—into one floor member examination covering all areas.

#### 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 Amex 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 Exchange proposes to discontinue using its "Qualification Examination for Regular Members" (equities exam) and "Put and call Stock Option Examination" (options exam) and combine these two exams into a comprehensive, four-hour floor member examination designed to test applicants on all three Exchange product lines—equities, options and exchange—traded funds. In the near future, the floor member examination will be assigned a series number by the National Association of Securities Dealers, Inc. (NASD), since the Amex Board has approved, and the Exchange is proposing to adopt, subject to SEC approval, new filing procedures for Forms U-4 and U-5 using the NASD's Web Central Registration Depository ("CRD") System. A separate proposed rule filing will be submitted to the Commission shortly on the Exchange's proposed use of the NASD's CRD System.

Under Amex's current options and equities examinations, applicants for Exchange membership have a total of three (3) hours to respond to 157 questions (100 equity questions and 57 options questions). The proposed floor member examination will consist of 200 questions and applicants will be allowed four (4) hours to complete the exam. The questions will test all three Exchange product lines—equities, options and exchange-traded funds. No two examinations will be alike. A computer will pre-select from among 242 approved questions, and each applicant will take a different version of the exam. The examination will continue to be given once a month and the passing grade will be 70% or 140 correct answers. The combination of the Exchange's equities and options examinations into the proposed floor member examination should result in greater industry-wide consistency and efficiency in the administration of the Exchange's examination process.

##### (2) Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>3</sup> of the Act in general and furthers the objectives of

Sections 6(b)(5)<sup>4</sup> and 6(c)(3)(A)<sup>5</sup> of the Act in particular in that it is designed to examine and verify the qualifications of an applicant for Amex membership. In addition, the proposed rule change serves to protect investors and the public interest by helping to assure member competence.

#### 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)(i) of the Act<sup>6</sup> and subparagraph (f)(1) of Rule 19b-4<sup>7</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within 60 days of the filing of such 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 of investors, or otherwise in 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 20549-0609. 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

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

<sup>2</sup> The proposal was originally submitted on March 29, 2001. The Amex filed Amendment No. 1, which made several technical changes to the proposal. See Letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, Commission (April 4, 2001).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78f(c)(3)(A).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

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. 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-2001-21 and should be submitted by May 8, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44173; File No. SR-CBOE-2001-10]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

April 10, 2001.

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 March 13, 2001, 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 rules to adopt formal procedures for members to submit proposals to list option classes on the Exchange, and to codify the Exchange's current procedures for considering whether to list an option class. The text of the proposed rule change is set forth below. Additions are in italics.

\* \* \* \* \*

#### Rule 5.3. Criteria for Underlying Securities

(a)-(b) No change.

. . . Interpretations and Policies

.01-.06 Unchanged.

.07 *A member may submit to the Secretary of the Exchange a written request that the Exchange list a particular option class whether or not the option class is traded on any other exchange or market. The request shall specify the reasons why the member believes the Exchange should list the option class. The appropriate Exchange committee shall make every reasonable effort to consider and make a decision regarding the request at its next meeting and in any event shall consider and make a decision regarding the request within 35 days of its receipt. If the appropriate Exchange committee denies the request or approves the request subject to conditions or limitations, the appropriate Exchange committee shall provide the member that submitted the request with a written response setting forth the rationale for its decision within 10 days of making the decision. If, in denying a request or approving a request subject to conditions or limitations, the appropriate Exchange committee relies upon a factor of other bona fide business considerations, the Exchange shall maintain a record of the bona fide business considerations supporting its decision. In the event the Exchange determines to list an option class requested to be listed pursuant to this paragraph, the allocation of the option class shall be governed by Rule 8.95.*

.08 *In deciding whether or not to list an option class, or to place any conditions or limitations on such listing, the Exchange will consider one or more of the following factors: (i) Whether the proposed option class satisfies applicable listing criteria; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations. These criteria shall apply to all option classes considered by the Exchange for listing, whether based on a member request or otherwise.*

#### 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

CBOE Rule 5.3 specifies criteria applied by the CBOE in identifying underlying securities on which the Exchange may want to trade options. In addition, from time to time, CBOE members request that the Exchange list specific option classes. Recommendations for listing, whether based on member requests or otherwise, are made by the Exchange's Stock Selection Committee, which is charged with recommending products for listing and trading on the Exchange, to the Exchange's Office of the Chairman and/or Board of Directors. In making recommendations, the Stock Selection Committee currently considers one or more of the following uncodified factors: (i) Whether the proposed option class satisfies applicable listing criteria detailed in CBOE Rule 5.3; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations.

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.<sup>3</sup> The Exchange believes that formalizing the existing procedures, including them in an interpretation to CBOE Rule 5.3, would provide members with more readily available and visible procedures in

<sup>3</sup> As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the CBOE, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. See Order Instituting Public Administration Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

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

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

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