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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Investco, Inc.; Order of Suspension of Trading

April 29, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Investco, Inc. ("Investco") because of questions regarding the accuracy of assertions by Investco, and by others, in press releases to investors concerning, among other things: (1) The company's assets, (2) the company's business combinations, (3) the company's current financial condition, and (4) a tender offer for Investco's outstanding shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, April 29, 2002 through 11:59 p.m. EDT, on May 10, 2002.

By the Commission.

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45828; File No. SR-Amex-2002-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to an Increase to 2,000 Contracts for the Two Near Term Expiration Months and to 1,000 Contracts for All Other Expiration Months in the Maximum Permissible Number of Nasdaq-100 Tracking Stock (QQQ) Option Contracts Executable through AUTO-EX

April 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4)<sup>2</sup> thereunder, notice is hereby given that on April 12, 2002, 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 Exchange. On April 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Commentary .02 to Exchange Rule 933 to increase to 2,000 contracts for the two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of Nasdaq-100 Tracking Stock ("QQQ") option contracts in an order that can be executed through the Exchange's automatic execution system ("AUTO-EX").

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

\* \* \* \* \*

#### Automatic Execution of Options Orders Rule 933

(a)-(b) No change.

#### Commentary

.01 No change

.02 Auto-Ex eligible orders must be market or marketable limit orders for two hundred fifty or fewer contracts for series subject to Auto-Ex except in the case of options on the Nasdaq-100 Tracking Stock (QQQ) which is limited to [five hundred] 2,000 or fewer contracts *in the first two (2) near term expiration months and 1,000 or fewer contract for all other expiration months*. Contract limits will be established on a case by case

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 11, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex amended its initial filing to include a representation that the Amex was trading up to 500 contracts in QQQ option contracts as of April 5, 2002 (*see infra* note 8) prior to the immediate effectiveness of this filing on April 12, 2002; to include the rule text being amended; and to request that the filing be re-characterized as a "noncontroversial" rule change under Rule 19b-4(f)(6) of the Act, 17 CFR 240.19b-4(f)(6).

basis for an individual option class or for all option classes upon the approval of two Floor Governors or Senior Floor Officials. Notice concerning applicable size and types of Auto-Ex eligible orders will be provided to members periodically via Exchange circulars and/or posted on the Exchange's web site.

.03 No change.

\* \* \* \* \*

#### 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

On March 22, 2002, the Commission granted approval to an Exchange proposal to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through AUTO-EX.<sup>4</sup> At the same time, the Commission also approved similar proposals filed by the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Exchange, Inc. ("PCX"), although in the case of the Phlx proposal, the increase to 250 contracts was limited to options on the QQQ.<sup>5</sup>

In the interim, the Chicago Board Options Exchange, Inc. ("CBOE"), on April 4, 2002, in various press reports indicated that, effective immediately, orders in the QQQ options of up to 500 contracts were eligible for instantaneous execution on the CBOE's Retail Automated Execution System ("RAES"). Previously, the maximum order size for QQQ options on the CBOE was 100 contracts. The Exchange represents that the ability of the CBOE to increase its RAES-eligible size to 500 contracts is

<sup>4</sup> See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002).

<sup>5</sup> See Securities Exchange Act Release Nos. 45629 (March 22, 2002), 67 FR 15271 (March 29, 2002) (order approving File No. SR-Phlx-2001-89); and 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (order approving File No. SR-PCX-2001-48).

based on Commission approval of a CBOE proposed rule change to establish the RAES-eligible size at the size of the disseminated options quote size.<sup>6</sup> The Exchange represents that, as a result, the CBOE is now able to provide immediate automatic executions of up to 500 contracts on RAES. The Amex notes, however, that this size may not remain static due to the new decrement feature of the CBOE system.

On April 5, 2002, the Exchange filed with the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4 thereunder, to increase to 500 contracts the maximum permissible number of QQQ option contracts in an order executable through AUTO-EX.<sup>8</sup>

The Exchange represents that the International Securities Exchange LLC ("ISE"), on April 8, 2002, announced that SLK-Hull Derivatives LLC, the primary market maker ("PMM") in QQQ options on the ISE, would guarantee a size of 2,000 contracts in the two near term expiration months and 1,000 contracts for all other expiration months for customer orders in QQQ options. The Exchange represents that the ISE, as a fully electronic exchange, automatically executes a customer order for the disseminated quote size once the order hits the available option quote. Accordingly, the Exchange represents that an ISE PMM that guarantees 2,000 contracts in the two near term months and 1,000 contracts for all other expiration months provides an automatic execution for these amounts.

Therefore, the Exchange, consistent with Commentary .03 to Exchange Rule 933, submits this proposed rule change to permit an immediate increase in its AUTO-EX eligible size for QQQ options to match the size of orders in QQQ options at the ISE that can be executed automatically by the ISE PMM.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular in that it 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 does not believe that the proposed rule change, as amended, 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, as amended.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (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 as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative as of April 12, 2002, in order to allow it to implement the increase to the maximum permissible number of QQQ option contracts executable through the AUTO-EX system. The Amex further believes that an operative date of April 12, 2002 is necessary so that trading in QQQ options does not hinge on a regulatory advantage, but instead remains competitive. In addition, under Rule 19b-4(f)(6)(iii), the Exchange is required to 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 or

such shorter time as designated by the Commission.

The Commission, consistent with the protection of investors and the public interest, has waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change, and has determined to designate the proposed rule change, as amended, as operative as of April 12, 2002, to allow the Amex to compete with the ISE, which currently allows executions of up to 2,000 contracts in the two near term months and up to 1,000 contracts for all other expiration months in QQQ options contracts.<sup>12</sup> At 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 of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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-2002-30 and should be submitted by May 23, 2002.

<sup>6</sup> See Securities Exchange Act Release Nos. 45490 (March 1, 2002), 67 FR 10778 (March 8, 2002) (notice of filing of File No. SR-CBOE-2001-70); and 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (order approving File No. SR-CBOE-2001-70).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> See Securities Exchange Act Release Nos. 45756 (April 15, 2002) (notice of filing and immediate effectiveness of File No. SR-Amex-2002-29). The filing was amended on April 8, 2002.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 17, 2002, the date that the Exchange filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45837; File No. SR-CBOE-2002-20]

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

April 26, 2002.

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 April 23, 2002, 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 Exchange proposes to amend CBOE Rule 6.7A to prohibit members from initiating certain types of legal proceedings against the Exchange or its contractors. The text of the proposed rule change is provided below. Text that has been added to the current Exchange rule is in italics.

Rule 6.7A Legal Proceedings Against *the Exchange and its Directors, Officers, Employees, Contractors or Agents*

No member or person associated with a member shall institute a lawsuit or other legal proceeding against *the Exchange* or any director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exists. This provision shall not

apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.

#### 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, CBOE Rule 6.7A prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any officer, director, employee, agent or other official of the Exchange or any of its subsidiaries based on action taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. CBOE Rule 6.7A does not prevent a legal proceeding based on violation of the federal securities laws where a private right of action for such violation otherwise exists, nor does it prevent appeals of Exchange actions as provided for in the Rules of the Exchange.<sup>3</sup>

The purpose of the proposed rule change is to amend CBOE Rule 6.7A to also prohibit a member or associated person from instituting a lawsuit or any other type of legal proceeding against the Exchange or its contractors. According to the CBOE, the proposed change to CBOE Rule 6.7A would not impair a member's ability to initiate legal action against the Exchange or its contractors based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, or other actions by the CBOE as provided for in the Exchange's rules. The Exchange believes that the proposed rule change would make CBOE Rule 6.7A consistent with the International Securities Exchange's Rule 705(c).

###### 2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, because by precluding certain types of legal actions by members against the Exchange and its contractors, it will further reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and protecting investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

##### 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder,<sup>7</sup> 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, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

At 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 of investors, or otherwise in the furtherance of the purposes of the Act.<sup>8</sup>

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

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

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>14</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.

<sup>3</sup> The Commission approved CBOE Rule 6.7A on July 11, 1996. See Securities Exchange Act Release No. 37421, 61 FR 37513 (July 18, 1996).