

Rule 901C should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted. The proposed rule change should also reduce instances where an index option listed on the Exchange is temporarily out of compliance with the concentration limits set forth under Commentary .03 to Amex Rule 901C because of changes in the market value of the underlying index components. Lastly, the Commission believes that that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a single security or a small number of securities to dominate an index.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the ISE.<sup>22</sup> In addition, the proposal implements concentration limits for narrow-based index options substantially identical to those previously approved for the Philadelphia Stock Exchange, Inc., which were subject to the full comment period with no comments received,<sup>23</sup> and for the ISE, which were approved by the Commission on an accelerated basis.<sup>24</sup>

The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>25</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-Amex-2005-069), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-52782; File No. SR-Amex-2004-74]**

### **Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Commentary .01(5) to Amex Rule 916 and Amendment to Amex Rules Relating to the Definition of "NMS Stock"**

November 16, 2005.

On August 27, 2004, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to eliminate Commentary .01(5) to Amex Rule 916 ("Commentary .01(5)"). The proposal would permit the opening of new option series on an underlying security previously approved for Amex option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 26, 2005, Amex amended the proposal to replace the term "national market system security" with the term "NMS stock" in its rules for consistency with Regulation NMS.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.<sup>4</sup> The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a

national securities exchange.<sup>5</sup> The Commission believes that the elimination of Commentary .01(5) is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires that rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Commentary .01(5) prevents Amex from opening new series of options covering the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that may more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination of Commentary .01(5) could help reduce investor confusion arising from inconsistent treatment of the underlying security and options covering the underlying security. Finally, the Commission notes that pursuant to Amex rule, the underlying security will not be deemed to meet Amex's requirements for continued approval if such underlying security is not subject to an effective transaction reporting plan and other requirements that address the liquidity and pricing of the underlying security.<sup>7</sup> Amex has represented it has procedures in place to monitor whether the underlying security continues to trade or is delisted from its primary market and will cease opening new series of options in such security and allow the existing series of options to expire. Amex has also represented that if the underlying security has been halted or suspended in its primary market, Amex may halt trading in the option class pursuant to Amex Rule 918(b) and shall halt trading pursuant to

<sup>27</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> In Amendment No. 1, Amex proposed to amend Amex Rule 915(a) and Commentary .01(6) to Amex Rule 916, in order to substitute the term "NMS stock" for the term "national market system security," for consistency with Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>4</sup> See Securities Exchange Act Release No. 52563 (October 4, 2005), 70 FR 59380.

<sup>5</sup> The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See proposed Commentary .01(5) to Amex Rule 916 (currently Commentary .01(6) to Amex Rule 916).

<sup>22</sup> See Securities Exchange Act Release No. 52578 (October 7, 2005); 70 FR 60590 (October 18, 2005).

<sup>23</sup> See Securities Exchange Act Release No. 50945 (December 29, 2004), 70 FR 1498 (January 7, 2005).

<sup>24</sup> See *supra* note 10.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> *Id.*

Amex Rule 117. The Commission expects Amex to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options covering such security.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2004-74), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52779; File No. SR-CBOE-2004-37]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Deletion of Interpretation and Policy .01(e) to CBOE Rule 5.4

November 16, 2005.

On July 1, 2004, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to delete Interpretation and Policy .01(e) to CBOE Rule 5.4 ("Interpretation .01(e)"). The proposal would permit the opening of new option series on an underlying security previously approved for CBOE option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 21, 2005, CBOE amended the proposal to replace the term "national market system security" with the term "NMS stock" in its rules for consistency with Regulation NMS.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.<sup>4</sup> The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.<sup>5</sup> The Commission believes that the elimination of Interpretation .01(e) is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Interpretation .01(e) prevents CBOE from opening new series of options on the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination Interpretation .01(e) could help reduce investor confusion arising from inconsistent treatment of the underlying security and option. The Commission notes that, pursuant to CBOE rules, the underlying security will not be deemed to meet CBOE's requirements for continued listing if such underlying security is not subject to an effective transaction reporting plan, and other requirements that address the liquidity and pricing of the underlying security.<sup>7</sup> Finally, the Commission notes that CBOE has stated that it will monitor the listing status of the underlying security and, pursuant to

Interpretation and Policy .01(f) to CBOE Rule 5.4, no longer approve an underlying security for the listing of new option series when the issue is delisted from trading. The Commission expects CBOE to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options on such security.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2004-37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52784; File No. SR-DTC-2005-08]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the New Canadian Link Service

November 16, 2005.

#### I. Introduction

On July 27, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2005-08 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On August 30, 2005, DTC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 26, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change will allow participants of DTC and participants of The Canadian Depository for Securities Limited ("CDS") (i) to clear and settle securities transactions in Canadian dollars and (ii) to transfer or receive Canadian dollars without any

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> In Amendment No. 1, which replaced the original filing in its entirety, the Exchange conformed the definition of "NMS security" in CBOE Rules 5.3(a)(1) and Interpretation .01(f) of Rule 5.4 to that found in Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>4</sup> See Securities Exchange Act Release No. 52562 (October 4, 2005), 70 FR 59382.

<sup>5</sup> The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See Interpretation and Policy .01 to CBOE Rule 5.4.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 52471, (September 19, 2005), 70 FR 56196.