

10. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, shareholders will be the persons having a voting interest in the shares of the Insurance Products Funds), and in particular, the Insurance Products Funds either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rules 6e-2 or 6e-3(T) under the 1940 Act are amended, or Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the Application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 or 6e-3(T), as amended, or proposed Rule 6e-3, as adopted, to the extent such Rules are applicable.

12. The Participants and/or their Adviser, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that the Board may fully carry out obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when the Board so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Funds.

13. If a Qualified Plan should ever become a holder of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with the Insurance Products Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an

acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21359 Filed 8-17-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41721; File No. SR-Amex-98-31]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Options on the Cure for Cancer Common Stock Index

I. Introduction

On August 14, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("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 authorize options on the Cure for Cancer Common Stock Index ("Index"). The Exchange submitted Amendment No. 1 to its proposal on January 28, 1999,³ Amendment No. 2 on February 24, 1999,⁴ and Amendment No. 3 on May 19, 1999.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amended Rule 19b-4 Filing ("Amendment No. 1").

⁴ See Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 23, 1999 ("Amendment No. 2").

⁵ In Amendment No. 3, the Exchange submitted a revised list of component securities for the Index and confirmed that the revised list of component securities satisfied all of the criteria set forth in the notice. See Letter from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated May 17, 1999 ("Amendment No. 3").

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on March 4, 1999.⁶ No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

A. General

The Exchange proposes to trade standardized options on the Index, a cash-settled narrow based index developed by the Amex. The Index is composed of the stocks of twelve companies engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes. The Exchange will use an equal dollar weighted methodology to calculate the Index.⁷ The Index was initialized at a level of 100.00 as of the close of trading on December 31, 1992.

B. Eligibility Standards for Index Components

Amex, as developer of the Index, is responsible for selecting and maintaining the companies to be included in the Index. The Exchange represents that the Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standards: (1) Each component has a market capitalization of at least \$75 million, except one that has a market value of at least \$50 million and accounts for no more than 10% of the weight of the Index; (2) more than 80% of the weight of the Index is accounted for by securities each having a trading volume of not less than 1,000,000 shares over each of the last six months and the remaining 20% of the weight of the Index is accounted for by components having a trading volume of not less than 850,000 shares over each of the last six months;⁸ (3) at least 75% of the Index's components and its numerical index value currently underlie standardized options; (4) foreign country securities or American Depositary receipts ("ADR") thereon are

⁶ See Securities Exchange Act Release No. 41100 (February 24, 1999), 64 FR 10512.

⁷ See *infra* Section II.C. entitled "Index Calculation" for a description of this calculation method.

⁸ Previously, one component of the Index specifically agreed to by the Commission was permitted to have a trading volume of not less than 350,000 shares. However, because the Amex revised the component securities comprising the Index (see Amendment No. 3, *supra* note 5), this provision is no longer needed. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999.

not currently represented in the Index; (5) all component stocks are either listed on the New York Stock Exchange ("NYSE"), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported National Market System ("NMS") securities; and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.⁹

The Exchange believes the potential for manipulation of the Index is minimized for the following reasons: (1) No single component dominates the Index, which is equal dollar weighted, with each component constituting approximately 8.3% of the Index; (2) at least 75% of the value of the Index is accounted for by stocks which currently underlie standardized options; and (3) the component stocks are substantial and liquid, having an average market capitalization of \$402.47 million, an average of 26.57 million shares outstanding, and a six-month average monthly trading volume of 5.8 million shares.¹⁰

C. Index Calculation

The Index will be calculated by the Amex using an "equal dollar weighted" methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. The following is a description of the methodology. As of the market close on December 31, 1992, a portfolio of stocks was established representing an investment of approximately \$100,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of share of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 100.00 as of the close of trading on December 31, 1992. Quarterly, following the close of trading on the third Friday of February, May August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts.

If necessary, a divisor adjustment is made during the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining components will be calculated and that amount invested in the stock of the new component to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

D. Index Maintenance

The Index will be maintained by the Exchange consistent with its original purpose (*i.e.*, to include components engaged in the research, creation, development and production of cancer fighting drugs, treatments and processes). As stated above, the number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions. All stock replacement and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the

public through dissemination of an information circular.

The Exchange will maintain the Index so that (1) the Index is comprised of no less than nine component securities; (2) the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of \$75 million and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of \$50 million; (3) 75% of the Index's numerical index value will meet the then current criteria for standardized option trading set forth in Amex Rule 915, except that one component included in the 75% may meet the then current criteria set forth in Amex Rule 916 if submitted to and approved by the Commission,¹¹ (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on Amex, NYSE, or Nasdaq/NMS; and (6) each of the component stocks shall have a minimum monthly trading volume of at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, trading volume must be at least 400,000 shares for each of the last six months.¹²

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the

¹¹ The Commission previously agreed to a specific component security that could satisfy Amex Rule 916 in lieu of Amex Rule 915. The Index, however, no longer needs this specific component to satisfy the 75% requirement. Nevertheless, the Amex has requested that it be allowed the flexibility to have any one of the components meet the maintenance requirements in Amex Rule 916 in complying with the 75% options eligibility requirement should that be necessary in the future. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999. The Commission has determined to allow Amex to utilize the exception in maintaining the Index provided that Amex submits to the Commission for its review and approval the proposed security that would satisfy Amex Rule 916 in lieu of Amex Rule 915. The factors the Commission will examine in determining whether to permit Amex to utilize Amex Rule 916 standards include, among other things, the security's market capitalization, daily and six month trading volume, and the last six months price history.

¹² The Amex raised the trading volume limit for the bottom 10% of the weight of the Index from 350,000 to 400,000 shares. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on May 21, 1999.

⁹ The Amex confirmed that the individual component securities satisfy all of the criteria set forth in the notice. See Amendment No. 3, *supra* note 5.

¹⁰ See Amendment No. 3, *supra* note 5.

Exchange not to be significant and the Commission concurs in that determination.

E. Expiration and Settlement

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.¹³

F. Contract Specifications

The proposed options on the Index will be European style (*i.e.*, exercises permitted at expiration only) and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. (ET)) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

G. Listing of Long-Term Options on the Full or Reduced Value of the Index

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration and FLEX Index options¹⁴ may be traded on the Index.

¹³ The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's ("OCC") by-laws, OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. See Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (order approving SR-OCC-95-19).

¹⁴ See Securities Exchange Act Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998) (approving FLEX options trading on all indices, including stock index industry groups). The Commission notes that the Amex has established position limits for industry index FLEX options at four times the position limits for standard options on the respective underlying industry index. Therefore, in the present case, the position limit could not exceed 60,000 contracts. Telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Terri Evans, Attorney, Division, Commission, on August 9, 1999.

Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on one-tenth (1/10th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options, either full or reduced value, would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise.

H. Exchange Rules Applicable to Stock Index Options

Amex Rules 980C will apply to the trading of option contracts based on the Index. These Exchange Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Amex Rule 900C(b)(1). With respect to Amex Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Amex Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.¹⁵

¹⁵ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,¹⁶ and in particular, with the requirements of Section 6(b)(5).¹⁷ Specifically, the Commission finds that the trading of options on the Index, including FLEX and long term full-value and reduced value index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the cancer research industry.¹⁸

The trading of options on the Index and reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these issues.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Index as narrow-based for purposes of index options trading. The Index is comprised of a limited number of stocks intended to track a discrete industry group: the cancer research sector of the stock market. Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the proposed Index options.¹⁹

stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options in the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the cancer research sector in the U.S. markets.

¹⁹ See *supra* Section II.H. entitled "Exchange Rules Applicable to Stock Index Options."

The Commission also believes that the liquid markets, relatively large capitalizations of the stocks comprising a majority of the weight of the Index, and relative weightings of the Index's component stocks minimize the potential for manipulation of the Index. First, most of the stocks are actively traded. The minimum monthly trading volume in the aforementioned top weighted component stocks of the Index as of May 14, 1999, ranged from 2.11 million to 5.81 million shares. Second the market capitalization of those stocks are relatively large, ranging from roughly \$117.66 million to \$1.19 billion. Third, because the Index is equal dollar weighted, no one particular stock or group of stocks dominates the Index. In addition, the Commission notes that the Exchange will review and maintain the Index consistent with its original purpose. Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above in Section II.D., at each rebalancing, at least 75% of the Index's numerical value will be composed of securities eligible for standardized options trading, except that one component included in the 75% and specifically agreed to by the Commission may meet the then current criteria set forth in Amex Rule 916. Finally, the Commission believes that Amex's existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks in the Index will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading, and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the Index will be subject to the same regulatory regime as other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on the Index. Finally, the Amex has stated that it will distribute information circulars to the public to

notify the public of changes in the composition of the Index and the handling of non-routine corporate actions at least ten business days in advance of the change, whenever possible. The Commission believes this should help to protect investors and avoid investor confusion.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities market. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.²⁰ In this regard, markets on which the components of the Index currently trade and the market on which all component stocks trade are members of the ISG, which provides for the exchange of all necessary surveillance information.

D. Market Impact

The Commission believes that the listing and trading of options on the Index, including long-term full-value and reduced-value Index options, on the Amex will not adversely impact the underlying securities markets.²¹ First, as noted above, due to the equal dollar weighting methodology, no one stock or group of stocks dominates the Index. Second, as noted above, most of the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the currently applicable 15,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contraparty non-performance will be minimized because the options on the Index will be issued and guaranteed by the Options Clearing Corporation just like any other

standardized option traded in the United States.

Lastly, the Commission believes that settling expiration options on the Index (including long-term full-value and reduced-value Index options) based on the opening process of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stock underlying options on the Index.²²

The Commission also finds Amendment No. 3 consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,²³ because it removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing investors with an additional means to hedge exposure to market risk associated with stocks in the cancer research industry while ensuring that only those component securities that satisfy the requirements set forth above are included in the Index.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 3 merely clarifies the composition of the Index and revises the trading data for all component securities. Accordingly, the Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,²⁴ to approve Amendment No. 3 to the proposal on an accelerated basis.

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

²⁰ See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

²¹ In addition, the Amex and the OPRA have represented that the Amex and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Index. See Letters from Scott Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated October 21, 1998, and from Joe Corrigan, Executive Director, OPRA, to Richard Strasser, Assistant Director, Division, Commission, dated January 15, 1999.

²² See Securities Exchange Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(5) and 78s(b).

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 in Washington, D.C. 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-98-31 and should be submitted by September 8, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-Amex-98-31), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21361 Filed 8-17-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41727; File No. SR-CBOE-99-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Market-Maker Surcharge Fee Schedule

August 11, 1999.

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 July 23, 1999, 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 is proposing to make changes to its fee schedule pursuant to

CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.³

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 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 Section 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

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) ⁴
For Motor Company (F)	\$0.14	\$0.00

⁴ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee for Ford Motor Company will be effective as of August 2, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)⁵ of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)⁶ of the Act and

subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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 is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁸

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 with the

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).